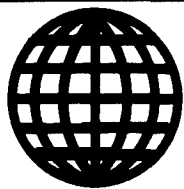


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GERMAN DEMOCRATIC REPUBLIC

Journal Critiques Joint Enterprise Laws

Operations, Jurisdiction Discussed

90GE0060A East Berlin NEUE JUSTIZ in German
Vol 44 No 3, Mar 90 (Signed to press 12 Feb 90) pp 92-96

[Article by Dr. Wolfgang Buchholz and Michael Sternal, scientific colleagues of the Office for the Legal Protection of the Property of the GDR: "Selected Legal Questions in the Founding and Operation of Enterprises with Foreign Participation in the GDR"]

[Text] The law on the amendment and supplementation of the Constitution of the German Democratic Republic from 12 January 1990 (GESETZBLATT I, No 4, p 15) [Legal Gazette] that involves the modification of Article 12 and the inclusion of Article 14a in the constitution as well as the decree on the founding and operation of enterprises with foreign participation in the GDR from 25 January 1990 (GESETZBLATT I, No 4, p 16)¹ went into effect on 30 January 1990. It is now possible in the GDR to establish enterprises in which foreigners—from East and West—appear as joint owners, enterprises that are frequently referred to in journalism as "joint ventures." With the admission of such enterprises, the GDR is opening itself up in an important area of the economy in the international division of labor and cooperation, which should serve, in particular, in a more rapid modernization of fixed capital in plants and combines utilizing foreign capital. The founding and operation of enterprises with foreign participation in the GDR raises a number of complex economic and legal questions. In the following, mainly those problems are commented upon that may be of importance for the operation of the agencies dealing with the administration of justice.

Relationship of the Decree to the Legal Bases of Company Law

For decades, questions of company law in the GDR have played only a subordinate role. A number of state-owned enterprises that were active in foreign economic operations in particular utilized the legal forms of the company with limited liability (GmbH) and the corporation (AG). In addition, specifically the limited partnership (KG) and the partnership (OHG) were the typical legal forms of the private and semistate concerns in the GDR until they were converted into national property in the early 1970's.

The legal bases for these company forms in the GDR were the law on corporations and companies on shares (Stock Law) dated 30 January 1937 (REICHSGESETZBLATT I, p 107, Ber. pp 588, I, 140), the law regarding companies with limited liability (GmbH Law) of 20 April 1892 (REICHSGESETZBLATT 1892, p 477 and REICHSGESETZBLATT 1898, p 846 with further amendments in the years 1926 through 1937) as well as

the Trade Code (HGB) of 10 May 1897 (REICHSGESETZBLATT, p 219 with amendments in the years 1902 through 1944) for KG and OHG in the respective valid versions.

After 1945, the application of these laws was modified through the decree on the transfer of the affairs of the voluntary jurisdiction (Transfer Decree) of 15 October 1952 (GESETZBLATT, No 146, p 1,057) with respect to the registration of the trade companies.²

With the legislation on enterprises with foreign participation in the GDR, recourse is taken to the traditional company forms under commercial law. Section 5 of the decree makes possible the founding of such enterprises in form of the GmbH, AG, KG and OHG. The use of other legal forms—conceivable, for example, would be the silent partner in accordance with Section 335 and following sections of the HGB or the company in accordance with Section 200 and following sections of the Law on International Economic Contracts (GIW) of 5 February 1976 (GESETZBLATT I, No. 5, p 61)—is not foreseen for enterprises with foreign participation.³ The so-called commercial-law provisions (HGB, GmbH-Law, Stock Law) are also applicable to the enterprises with foreign participation formed in the respective legal forms; but the provisions of the decree, as regulations under public law, take preference over the regulations of commercial law. This relates, among other things, to the compulsory nature of the agreements under company by-laws (sections 6 and 31), the proviso of state approval (sections 8 through 31),⁴ registration,⁵ the minimum amount of capital stock of a GmbH or of the original stock of an AG (Section 16), the investment of contributions in kind (sections 17 through 19), accounting, the annual balance statement and disclosure (Section 23).⁶

In applying the decree, it is necessary to take care that the regulations are applied in the model of capital companies (GmbH or AG). To the extent that exceptions to the application of individual provisions of the decree to the KG and OHG are not provided for in the last sentence of Section 5, Paragraph 3, all of the other provisions of the decree are also applied to the KG and OHG when individual provisions refer only to GmbH (e.g. Section 6, Paragraph 1 first stroke; Section 19, second sentence). The special features of the KG and OHG as companies of persons are naturally to be considered thereby (compare Section 5, Paragraph 3, Sentence 2), e.g., in the application of sections 16 and 17.

On Company Contractual Agreements

The company contractual agreements to be established for the founding of enterprises with foreign participation must meet the requirements set by the decree as well as the laws in which the respective company forms are regulated. Only within these limits is there freedom to form the company contract or, in the case of the stock companies, the by-laws.

In the formulation of the company contractual agreements, the following compulsory provisions must be observed in particular:

1. At least one citizen of the GDR resident in the GDR must be represented in the management of the enterprise (Section 6, Paragraph 1 first stroke). In the case of the OHG and KG, this means that at least one of the personally liable partners empowered to represent the company must be a citizen of the GDR, resident in the GDR.

2. In the case of stock companies, qualified requirements are made for the manning of the management body: the number of board members who are citizens of the GDR, resident in the GDR must at least correspond to the share of the participating persons from the GDR in the original stock (compare Section 6, Paragraph 1, second stroke). That is, with a GDR-share of 51 percent of the original stock of an AG, a board made up of three or four persons must have two members who are citizens of the GDR resident in the GDR.

3. If an enterprise is to be founded in the legal form of a GmbH, then one must take heed that, departing from Section 5 of the GmbH Law, the capital stock must be at least 150,000 marks of the GDR. In the case of the founding of an enterprise in the form of an AG, the capital stock must, departing from Section 7 of the Stock Law, be at least M 750,000 (compare Section 16 of the decree).

4. The transfer of business shares in an enterprise—of shares of stock in the case of an AG—must be made dependent upon the approval of all partners (Section 6, Paragraph 1, third stroke). Hence a provision of the by-laws under which shares are issued as bearer shares is not permissible in the case of enterprises with foreign participation (compare also Section 6, Paragraph 2).

5. The company contract or by-laws must provide that the GDR-participants in the enterprise are entitled to an option right in the event that business shares or shares of stock are transferred to third persons (Section 6, Paragraph 1, third stroke).

All of these provisions are aimed at securing the minimum positions of the GDR-participants in enterprises with foreign participation, thereby preserving the national element in our economy.

A special requirement on the formation of the company contractual agreements results from Section 31, Paragraph 2, under which the workers' rights of codetermination as foreseen in legal provisions are to be applied in the company contract or by-laws. The current legal situation is thereby characterized by the fact that—in contrast to the FRG, for example—a dispatching of representatives of the workers to managing bodies of enterprises is not yet provided for by law; Section 24, Paragraph 2 of the AGB [expansion unknown] establishes only the right of the chairman of the enterprise

trade union committee to participate in the labor deliberations of the respective managers. For enterprises with foreign participation, therefore, it can be considered the rule that the chairman of the enterprise trade union committee is to be granted the right to participate in meetings of the management, board of directors or supervisory board without the right to vote. At these meetings, he has a right to take a position on problems involving the workers (compare in particular sections 22 through 24 of the AGB and Section 31 of the decree).

The company contract or by-laws must be presented in draft form to the approving authority in the procedure for the approval of the founding of the enterprise with foreign participation. For larger enterprises⁷, the Economic Committee of the GDR Council of Ministers⁸ is responsible for the granting of approvals and in other cases the respective regional councils are responsible. Since conditions can be made in the approval procedure, the company contractual agreements should not be concluded until the approval is granted, because otherwise it may be necessary to agree on subsequent amendments.

In the interest of legal security, it is prescribed that company contract or by-laws require notary certification for the founding of a GmbH or AG (Section 6, Paragraph 3 of the decree; Section 16 of the Stock Law; Section 2 of the GmbH Law). For the reasons already mentioned, notary certification is advisable only after the granting of the approval to found the enterprise. In the certification of company contracts for GmbH or by-laws for AG in the case of enterprises with foreign participation, not only the requirements of the GmbH Law or of the Stock Law but also those of the decree are to be observed in the sense of Section 16 of the Notary Law.

Registration of Enterprises

Enterprises with foreign participation need to be registered. The contract courts thereby function as the registering agency (compare Section 14). The special feature of the register with the contract courts is that for the enterprises with foreign participation they simultaneously take over the functions of the commercial register; there is no separate registration of these enterprises with the district councils that are otherwise responsible for the maintenance of the commercial register in accordance with Section 49 of the Transfer Decree. Accordingly, the contract courts decide in all matters involving the enterprises that are incumbent on the courts of registry in accordance with the regulations on commercial law.

In the future, for the examination of the distinguishability of the firm of a commercial company (regardless of whether or not there is a foreign participation) in accordance with Section 30 of the HGB, both the entries in the register with the contract courts as well as the entries in the commercial register with the district councils are to be considered. The contract courts are to check the prerequisites under commercial law for the inclusion of enterprises in the register as well as the conformity of

the company contract or by-laws with the granted approval (compare Section 14, Paragraph 1).

Special Features of Contributions in Kind

The participants in the enterprise have the possibility of making their contributions in the form of cash investments—including in foreign currency—as well as in the form of all sorts of contributions in kind (compare sections 17 and 18 of the decree).

The investment of real estate in enterprises, however, is not yet foreseen in view of the fears of a sellout of the GDR expressed by many sides. Participants in the GDR can bring real estate into the enterprise only for use (Section 17, Paragraph 2). This does not change the right of ownership of real estate. But the participants in the GDR can invest buildings and structures on the land in the enterprise, whereby there is a transfer of ownership to the enterprise regardless of the legal form of the enterprise. Section 17, Paragraph 3 stipulates that in this case independent ownership arises regardless of the ownership of the real estate. When new buildings are put up by the enterprise, it can establish ownership of these buildings as long as they stand on real estate that has been brought into the enterprise.

The contributions in kind are evaluated in the company contract or by-laws in free agreement between those participating in the enterprise. They are not thereby bound to the price regulations of the GDR and should orient themselves on international market values in a generalization of the principle set forth in Section 17, Paragraph 2 for the evaluation of the right of use of the land. In the interest of the creditors of the enterprise and to protect the participants in the GDR, the values of the contributions in kind are to be audited on the basis of Section 19, Sentence 2 in conjunction with Section 5, Paragraph 3 of the decree for GmbH, OHG and KG as well in accordance with the provisions of the Stock Law (sections 25 through 27). This audit must take place before the application of the enterprises for registration; the contract court appoints the foundation auditors on application (compare Section 25, Paragraph 3 of the Stock Law). The audit report is one of the documents to be submitted when applying for registration (Section 29, Paragraph 2, Subparagraph 4 of the Stock Law); the contract court can also refuse to register an enterprise under the prerequisites of Section 31, Paragraph 2 of the Stock Law (deficiencies in the audit report; too high evaluation of the contributions in kind).

Working Conditions

The labor and social security law of the GDR applies for the labor law and social security relations of the employees of enterprises with foreign participation. The remuneration and the social security payments are in GDR marks (Section 30). There is no compliance with notions under which special provisions must apply for the working conditions in such enterprises. They apply the skeleton collective labor agreements (RKV) or the

wage agreements of the corresponding economic branches. This determines the basic conditions for remuneration of labor and the length of the weekly working time and vacation. In our opinion, the following is relevant for the application of the RKV or wage agreements:

- If the economic activity of the enterprise corresponds with that of the GDR-participant, then his RKV or wage agreement is to be applied. If several partners are participating on the side of the GDR, then the RKV or wage agreement is to be applied that comes closest to the economic activity of the enterprise;
- If state-owned and private concerns are participating on the side of the GDR and if their economic activity agrees equally with that of the enterprise, then the RKV of the VEB [State enterprise] is to be applied unless its participation in the company is of secondary importance;
- If there is no congruence between the economic activity of the GDR partner and that of the enterprise, then the RKV of an economic branch is to be applied that comes closest to the economic activity of the enterprise, provided that a VEB, a state facility or a cooperative is participating on the side of the GDR. If exclusively craftsmen, business people and other citizens are participating on the side of the GDR, then a wage agreement for concerns with comparable economic activity is to be applied.

For official trips of employees of enterprises to foreign countries, the traveling expenses law of the GDR with respect to the payment of per diem allowances in foreign exchange is applied.

There is complete contractual freedom for the conclusion of service contracts with foreign business managers and members of the board (compare Section 32, Paragraph 1).

Foreign partners can send specialists to work in the enterprise. This does not establish an employment relationship with the enterprise (compare Section 32, Paragraph 2). Agreements can be reached between the foreign partner and the enterprise on the manner of the reimbursement of the associated outlays of the foreign partner. The provision of Section 32, Paragraph 2 does not prevent the enterprise with foreign participation from signing labor agreements with foreign workers but only under the conditions valid for the working people of the GDR.

Tasks of the District Courts

Based on the relatively favorable basic conditions for foreign investments and the special character of the relations with the FRG, it is expected that a very large number of enterprises with foreign participation in the territory of the GDR will be founded in quite a short time. Since the district courts are responsible for the deciding of disputes under the company law relationship

(that is, the relationship of partners to each other and to the company) under the general commercial law and under Section 34, Paragraph 1 of the decree, it can be assumed that in the future the district courts will have to deal with cases involving company law much more frequently than heretofore.

It is relatively difficult to differentiate from the register matters that—departing from the original concept of commercial law—are to be handled and decided by the contract courts (compare Section 14, Paragraph 1, last sentence). In our opinion, the latter also include, for example, the appointment of legal representatives of the company in the cases stipulated by legal regulations (e.g., liquidators in accordance with Section 146 of the HGB or Section 66 of the GmbH Law).

A further differentiation problem results when the participants in the enterprise make use of the option of Section 34, Paragraph 1, Sentence 2 and agree on the competence of a domestic or foreign court of arbitration for disputes involving property rights, because theoretically all problems in the company law relationship can also effect the property situation of the participants. In any case, matters that involve the existence of a company or the existence of decisions of agencies of the company (inoperativeness, voidableness and voidness) are to be seen as disputes that do not involve property rights and therefore do not have to be referred to courts of arbitration for decision.

In all instances, the district courts as well as the courts of arbitration must apply the law of the GDR in the legal relations of the enterprises with foreign participation in the GDR in accordance with Section 8 of the Legal Applications Law on 5 December 1975 (GESETZBLATT I, No 46, p 748), because these enterprises derive their legal capacity from the law of the GDR. There is no room for an agreement on the application of the law of other states, especially that of the FRG.

In view of the increasing use of traditional legal forms of companies in the GDR, as enterprises with or without foreign participation, the district courts are faced with almost unsolvable tasks when such enterprises become heavily indebted because of the superseding of the bankruptcy rules in 1975 through the decree on overall execution dated 13 December 1975 (GESETZBLATT I, 1976, No 1, p 8). Hence legislation and jurisprudence in the GDR are faced with the task of bringing about an up-to-date regulation of insolvency law in a very short time.

Footnotes

1. When the following paragraphs are given with no reference to a legal regulation, then they relate to this decree.

2. The place of the court of registration was taken by the Local Industry and Trade Department (Now: Department for Local Service Sector and Utilities) of the district council under which the commercial register is

maintained (Section 49 of the Transfer Decree). Inspection of the register can be made dependent upon the substantiation of a legal interest (Section 56, Paragraph 1 of the Transfer Decree). Public announcements are no longer made (Section 52, Paragraph 2 of the Transfer Decree). The presentation of annual statements of account and business reports is now required only upon request by the local council (Section 57 of the Transfer Decree).

3. The authors see the GmbH & Co. KG as a limited partnership and therefore consider it to be approved for enterprises with foreign participation as well. In the case of the GmbH, however, it would have to involve a GmbH existing in accordance with the law of the GDR.

4. Compare also the first implementing regulation on the decree on the founding and activity of enterprises with foreign participation in the GDR—Implementation of the Approval, 21 February 1990 (GESETZBLATT I, No 11, p 85).

5. Compare also the order on the keeping of the register of enterprises with foreign participation in the GDR—Register Order, 29 January 1990 (GESETZBLATT I, No 6, p 34).

6. Compare also the third implementing regulation on the decree on the founding and activity of enterprises with foreign participation in the GDR—regulations for accounting and statistics, 21 February 1990 (GESETZBLATT I, No 11, p 88).

7. In accordance with Section 2 of the first implementing regulation (Footnote 4), larger enterprises are those that have more than 200 workers on an annual average or more than M 20 million in annual turnover.

8. Compare resolution on the founding of an Economic Committee of the Council of Ministers on 18 January 1990 (GESETZBLATT I, No 5, p 24).

Legislative Provision Examined

90GE0060B East Berlin NEUE JUSTIZ in German
Vol 44 No 3, Mar 90 (Signed to press 12 Feb 90)
pp 95-96

[Article by Prof. Dr. Gerhard Dornberger, Jurisprudence Section of Humboldt University in Berlin: "Critical Remarks on the Decree Regulating the Founding and Activity of Enterprises With Foreign Participation in the GDR"]

[Text] The decree on the founding and activity of enterprises with foreign participation in the GDR of 25 January 1990 [GESETZBLATT I, No 4, p 16]¹ is one of the first basic legislative works that was enacted to prepare and implement the economic reform in the GDR. Their quality is to be measured by how successful they have been in realizing the basic idea of the economic reform and the constitutional state. On this basis, one could prove with the decree that the GDR Government is able and willing to organize the processes that are

now taking place in the national economy, which also includes a high methodical quality of the legislation.

In my opinion, the decree does not do justice to this demand. On the contrary, it shows a number of deficiencies with respect to substance and method.

Restrictive Provisions That Do Not Consistently Promote the Founding of Enterprises

The decree documents the fact that—as in so many other manifestations of the revolutionary transformation—progress is being made only very hesitantly. One cannot resist the impression that this decree is intended more to hinder than to promote a foreign participation.²

This restrictive approach is expressed consistently in the decree—in the following provisions, for example:

- the long processing time of three months for the application for approval (Section 11, Paragraph 3);
- the requirement for a minimum capital stock of M 150,000 for GmbH and M 750,000 for corporations (Section 16);
- the inadequate legal development of the guaranteed transfer of profit in foreign currency (Section 25);
- the enumeration of reasons for the refusal of approval that gives too much discretion (Section 13).³

If the GDR seriously intends to transform the economy consistently from a centrally managed command economy to a socially and ecologically oriented market mechanism, one must also understand that in the legislation on economic operations it has to establish the framework for entrepreneurial action. The enterprise's decisionmaking latitude receives a different weight under the new social conditions. They include inseparably the unrestricted responsibility for economic activities and the consideration of the market requirements by the business managers and board members of the enterprises. All partners—those in the GDR and in foreign countries—have a common interest: the effective utilization of their collective assets to achieve a maximum profit.

Inadequate Constitutional Diction of the Decree

Many formulations of the decree remind one of the insufferable kind of administration in previous legislative acts. In the future, it is necessary to avoid formulations that give the impression that the state is showing mercy to those involved by granting them certain precisely limited freedoms. This no longer up-to-date diction is apparent, for example

- in the retention of an essentially superfluous preamble (whereby here it was even used to incorporate a legal definition);
- in didactic provisions, as though the enterprises receive these rights only through the decree (in sections 1, 15 and 20, paragraphs 1 and 2, among other

places). In accordance with Section 21, Paragraph 1, the prices must promote an economic development oriented toward the market and competition, whereby it remains open, to be sure, whether they are otherwise legally ineffective. Section 22, Paragraph 1, for example, proclaims a truism, namely that enterprises take responsibility for the use of their means—a right that does have to be “granted” to them. Analogously, that also applies to Section 25 on the validity of the “principle of the self-accumulation and self-financing” of foreign exchange;

- in the retention of the no longer constitutionally acceptable principle of the handling of very fundamental questions at a later time in a large number of regulations;
- in the inadequate regulation of appeals. Since, in accordance with Section 8, the decision on the application for approval of the founding of enterprises is made by the Economic Committee (a commission of experts under the leadership of the chairman), it contradicts all constitutional thinking when Section 36 sets forth that the final decision is made by the chairman of the Economic Committee, that is, the same person who denied approval.

This inadequate constitutional diction is also evident with W. Buchholz and M. Sternal (loc. cit. p 93), when they state: “...as regulations under public law, the provisions of the decree take precedence, however, over the provisions under commercial law.” Aside from the fact that the laws under commercial and company law also contain provisions not just under private law—as, for example, in the maintenance of a register—a decree is never above a law. The present decree can only function as a *lex specialis*, in that for company forms with foreign participation supplemental conditions are regulated that go beyond those in the laws in effect. If this essential context had been revealed in a qualified manner, then it would have been possible to dispense with many completely superfluous provisions in the decree that already result from the HGB, GmbH Law, and Stock Law.

Deficiencies in the Methods of Laws, Contradictions, and Vagueness

It is painful to have to point out the sometimes inadequate mastery of the juridical methods of legislation and erroneous legal principles that contradict the laws in force.

Thus, Sections 4 and 5 are contradictory per se. It is not so easy to see why in the first sentence of Section 4 the formulation is: “The enterprises are legal persons of the GDR.” What is this supposed to say? The fact that the GmbH and AG are legal persons is already regulated in the corresponding laws. The OHG and KG, on the other hand, are not, although they are also included in the term “enterprise,” so that one was forced in Section 5, last sentence of Paragraph 3 to provide for a completely superfluous exception.

Also incomprehensible is the provision in Section 4, last sentence of Paragraph 2, under which the state has no liability for obligations of the enterprises. Probably no one has yet come up with the idea that for commercial companies (for persons as well as for joint-stock companies) there would be a subsidiary liability of the state or this would have to be provided for. At best, one could justify a provision to the effect that in the investment of a VEB [State enterprise] a subsidiary liability of the state is out of the question for this portion.

In Section 4, third sentence of Paragraph 2, the liability of the enterprises for their own obligations with their property is provided in general as a legal principle. That is true, however, for only two kinds of enterprises—for the GmbH and AG—and not for the OHG and KG.

The decree contains many vague provisions that immediately raise further questions and have a negative effect on legal security. Among other places,

- in Section 11, under which “data” are approved in accordance with Section 9. This results in the question of whether the company contract is also subject to approval, for it must also be presented in the draft and is among the basic documents for the founding of enterprises;

- the provision in Section 14 that requires registration. It is probably well known that all commercial companies are to be entered in the commercial register. In my opinion, the decree should rather have provided that for the enterprises the entry is not to be made in the commercial register but in a special register with the state contract court that takes the place of the commercial register for these enterprises;

- in Section 6, which mentions only GmbH and AG. W. Buchholz and M. Sternal (*loc. cit.*, p 93) are of the opinion, however, that the requirement for a minimum participation of citizens of the GDR in management would also apply for OHG and KG. But that would have required an express provision.

- in Sections 18 and 27. Accordingly, the foreign partner can make his deposit only in foreign currency, whereas the capital stock is to be determined in marks. The conversion is to take place at the rate of exchange in effect for the nationally owned enterprises. As long as the conversion coefficient is unknown, there can be no competent assessment of the capital or original stock;

- through many references to legal provisions that, as a rule, are unknown to the participants. Section 33, for example, proceeds from a contribution for social funds to be levied in accordance with the legal regulations. Precisely this provision shows that insufficient thought was given to its intent. This contribution was introduced for state-owned enterprises and combines and was based on specific financing concepts. But enterprises are subject to other tax principles (corporation profits tax, property tax, trade tax, turnover tax,

income tax, and others), so that there really probably is not any room for additional taxes, even if they are not designated as such.

Section 20 on the law to be applied for contractual relations of the enterprises within the country represents a complicated and factually quite unjustified provision. Provided that the enterprises with their partners have not agreed to apply the Law on International Economic Contracts (GIW), the application of the Contract Law is, in my opinion, inappropriate even when there is no suitable right available. Certainly the Contract Law includes well-established norms for the signing, formation, and fulfillment of contracts as well as for responsibility. It must, however, be taken into account that most of the provisions were inseparably linked with the old administrative command economy, with the obsolete planning and balancing system and with a consistent liability to conclude contracts and many limitations of the freedom of the economic subjects to make decisions. If strictly adhered to, such norms would have a hampering effect on the economic activity of the enterprises and impair self-responsible action. In addition, the Contract Law includes a great number of “ideologized” norms in relation to democratic centralism, for example, that are out-of-date. For this reason, one would have done well to have aimed for the application of the GIW from the beginning.

There are also juridical absurdities in Section 10. Accordingly, the opinion of the enterprise trade union organization of the participant of the GDR is to be appended to the application for approval. But in accordance with Section 2, Paragraph 1, craftsmen, persons in business and other citizens can be participants of the GDR in enterprises.

Likewise unclear is the provision of Section 25, Paragraph 3, which states that the foreign participant can freely transfer his share of the profits to foreign countries from the remaining foreign exchange receipts. This raises the question of whether the share of the profit cannot be transferred if the foreign exchange receipts are not adequate. In this connection, mention must also be made of Section 25, Paragraph 5, according to which liquidation receipts for the foreign partner can be transferred only when the receipts are realized in foreign exchange. From a legal point of view, one cannot proceed on the basis that the foreign partner brings his share into the enterprise in foreign exchange but then is not guaranteed his share in foreign exchange.

All in all, I think that the decree in its totality and juridical quality does not adequately meet the legal objective behind it and that a chance to take decisive steps on the way to a constitutional state was not utilized. Consequently, it is already apparent that the present decree will not last long. A new government will change it radically and have to attempt to prove that well-designed legal regulations can be issued in the GDR that contribute to the resolution of the complex economic problems.

Footnotes

1. All of the following statements on paragraphs with no reference to the source relate to this decree.
2. Compare in this connection W. Buchholz and M. Sternal, "Selected Legal Questions in the Founding and Activity of Enterprises With Foreign Participation in the GDR," in this volume, p 92 and following pages. They formulated: "All of these provisions are aimed at securing minimum positions of the GDR participants in enterprises with foreign participation and thereby at preserving the national element in our national economy" (p 93).
3. It is therefore by no means surprising when the president of the Federation of German Industries (BDI), T. Necker, reaches this conclusion: "This law will not attract any capital." And he further says the state's fear of losing its power speaks from every line (BERLINER ZEITUNG, 6 February 1990, p 3).

Official Interviewed on Stasi Dissolution

90GE0055A East Berlin DIE ANDERE in German
No 10, 29 Mar 90 pp 3-4

[Interview with Werner Fischer, official charged with dissolving the Ministry for State Security, by Reinhard Weissshuhn, place and date not given: "The Stasi: Simply Submerged?"]

[Text] [Weissshuhn] Have you achieved anything so far and if so, are you satisfied?

[Fischer] The situation with which we are all confronted—both the citizens committee and we who were authorized by the government to supervise the dissolution—does not satisfy us. In contrast to two weeks ago when we all felt more or less that we had the dissolution under control, I now have the feeling that everything is slipping out of my grasp. That feeling now goes far beyond the matters which concern the dissolution of the Stasi itself. Once the ministry was dissolved, a sort of vacuum took its place. The KGB is at work and other intelligence services, particularly the FRG intelligence service, feel that they have to jump into the breach.

[Weissshuhn] Have you noticed any activities by Western intelligence organizations?

[Fischer] None that we can prove at the moment. But there are any number of reports—always by former Stasi members.

[Weissshuhn] Doesn't that mean that the Stasi is still at work as well?

[Fischer] I believe that they are no longer working as members of the Ministry for State Security. They may be continuing to work for other clients—the KGB for example or others, particularly the West German intelligence services.

[Weissshuhn] How come you are so sure that the Stasi is not continuing to operate as a scaled down, strictly underground organization?

[Fischer] I simply cannot see the client—or, for that matter, the motivation.

[Weissshuhn] There are a number of possibilities—and it is not really a question of looking for motivation but of digging out facts. Are you at all able to do that?

[Fischer] No, not at present. There are structures which we do not yet know about. I am simply going on the assumption that a certain segment of the former state security apparatus is behaving the way any intelligence organization has to behave in a special political situation of this nature. I have some information in my possession on orders for "Day X" which tell staff members to behave "normally" at the outset, to carry on a normal professional life but to be aware of the fact that they are to meet in a specific place five or God knows how many years from now. It can thus be assumed that an informal network does exist which is kept in place and is activated for whatever eventuality.

[Weissshuhn] Can you prove that?

[Fischer] No.

[Weissshuhn] In other words, the Stasi is being dissolved by the Stasi itself. Am I correct?

[Fischer] Former Stasi members have been instructed by the prime minister to carry out the dissolution. I do not think that is such a bad idea. But you know of course what things are like [at the MfS]. The important thing is that the dissolution is controlled and it is the citizen committees that are controlling this GDR-wide process.

[Weissshuhn] Do the citizen committees have enough people to do the job?

[Fischer] I think they do. But in view of their lack of familiarity with the localities and the connections within that apparatus it is doubtful now and again whether they are able to exercise complete control in every instance.

[Weissshuhn] This deficiency would make it seem appropriate to offset it by adding personnel, i.e., every individual working on dissolution would be backed up by one or more members of the citizen committees.

[Fischer] I would very much have liked to see the citizen committees beefed up. But we have instead seen the committee memberships decline after the first exciting weeks in January. A good many have left their posts.

[Weissshuhn] The problem is not just one of numbers but of composition....

[Fischer] That presents difficulties to all those who are aware of the problems, including the citizen committees. From the start, there was a sporadic element about the composition. Nobody was checked and the possibility

exists that this or that former member of the state security apparatus found a niche for himself....

[Weissshuhn] That limits your chances to make an impact even further. Do you still believe that your work will succeed?

[Fischer] Those who have been authorized by the government to dissolve the MfS both in the bezirks and at the Normannenstrasse headquarters are totally unable to exercise control over the dissolution process. We must count on the local citizen committees to do their job properly. However difficult that may be for us, we must attempt to understand the frame of mind of the former MfS members who are carrying out the dissolution process and attempt to stay one step ahead of them at all times.

[Weissshuhn] The fundamental problem confronting you is that you, as a single individual, are virtually powerless. Am I right? For example: you were forced to accept the fact that entire Ministry of State Security units were taken over by the Ministry for Internal Affairs. Just the same, you only requested and gained approval for the assignment of a single individual to the Ministry for Internal Affairs to supervise that process.

[Fischer] Brinksmeier who was appointed as the government representative and as an assistant to Internal Affairs Minister Ahrendt was given the authority to speak for the Ministry for Internal Affairs. We consider that a success for our side. He did not join the ministry all by himself but succeeded in taking some of his close associates with him. And we saw to it that a prosecuting attorney we trusted worked with the team. As far as the appointment of former Ministry of State Security members to the Ministry for Internal Affairs is concerned, we have a far better idea of what goes on there and a far better chance of setting limits and to have decisions by the internal affairs minister rescinded.

[Weissshuhn] The damage caused by the internal affairs minister's wrongheaded decisions can no longer be repaired, can it?

[Fischer] We were able to repair some of the damage. One concrete example is the "ammunition salvage service" which not only included expert personnel as had previously been agreed and as we had asked. This decision was revoked. The men were reassigned to other positions inside the ministry and the unit itself was decentralized. At present all we can do is try as best we can to solve such problems. We have no influence over decisions someone else may make under a future government.

[Weissshuhn] Your most pressing problem is the refusal of the state prosecutor's office to check on the new People's Chamber deputies, i.e., possible former Stasi members on the grounds of parliamentary immunity.

[Fischer] From the very outset we were probably too timid in our dealings with the state prosecutor's office.

We were quite unable to work with the prosecutors they assigned to us. At times, we even had the impression that they were deliberately obstructing our work.

[Weissshuhn] There is a heated debate going on about the personal files—whether to destroy them or not; whether to provide access to them or not. The Volkskammer deputies' files are a case in point. How could these files be preserved and what precautions could be taken against their unauthorized use?

[Fischer] Let me respond to the first part of your question first. There is no such thing as a 100-percent guarantee. That is why I said from the very start that the 6 million personal dossiers should be destroyed because every single one of the 6 million would otherwise be subject to blackmail. I wanted to keep a climate of suspicion, a witchhunt atmosphere from being stirred up. Now that the election is over and we have received a wealth of information, I feel the situation has changed in that we now have elected officials ready to assume responsibility in this country. I believe that the population has a right to have its representatives checked. Otherwise we could be accused of trying to hush things up. There was a cutoff point as far as I was concerned and after that I spoke out in favor of disclosing the information on all the elected candidates.

[Weissshuhn] That still leaves the technical problem of safeguarding these dossiers.

[Fischer] There are various ways of going about this. One of these I find particularly persuasive, i.e., to place all of the archives under international control. In any event, it would have to be stipulated by law that the material cannot be passed on to the Salzgitter archive. Indeed, they have already asked for it. One should also keep in mind that a large part of the recorded information has been in the hands of the KGB for a long time and one must also assume that the data is in the hands of other intelligence organizations as well.

[Weissshuhn] How much longer will it take to complete the dissolution of the Stasi?

[Fischer] It is very hard to fix a date. We are going on the assumption that it might still take a year before we can say with any assurance that the Stasi no longer exists—either physically, in terms of personnel, or in terms of its organizational structure.

[Weissshuhn] Isn't there an organization emerging which was given the job of dissolving the Stasi but is now doing the exact opposite or at least not doing more than is absolutely necessary and is headed by a dissident who acts as a front man?

[Fischer] I am not saying you are wrong in putting it this way. Just the same, I have had a great many lengthy conversations with former MfS staffers who are taking part in the dissolution process. Many of these lower-level people are disappointed about their leaders and are quite

ready to cooperate. I would have to be very much mistaken, if these people really acted the way you said they do.

[Weissshuhn] That may apply to the ones you mentioned. But shrinking an organization down does not mean dissolving it. How do you know that this is not only a big show that obscures the true facts?

[Fischer] Given my position, it is of course very difficult to agree with what you say. If it were really so, I would have to throw the whole thing over right now and quit. But based on what I have learned in my job I am going on the assumption that there is only a very slight chance that a restoration could take place. I perceive a different kind of danger which is that former high-ranking members of the Ministry of State Security staff could gain a toehold in industry on the basis of their knowledge and their connections in the economy. There are some indications of that. These people know which plants are worth how much and how efficiently they operate.

[Weissshuhn] It is one kind of problem if a member of the secret police switches to a position in industry and a different one if he collects dossiers and information on people in order to blackmail them.

[Fischer] I am also afraid that a good many people who possess certain information will some day make use of it. There might be commercial motives behind such actions. That would be bad enough in and of itself. But I am also concerned about the fact that these people might get into politics—as some People's Chamber deputies just did. That would present us with a parliament that could be blackmailed and I am not sure that this is really the way to start developing into a democracy. In case of unification this set of circumstances also applies to the FRG.

[Weissshuhn] The new government may be expected to institute several changes. Interest in you as an individual and in your activities would probably not be very great.

[Fischer] I have always viewed my job as a way of highlighting and publicizing the political aspect of our work. Whether or not the new government wants someone like me in this position is a political decision it will have to make.

Local Elections, Changes Critiqued

Weekly Fears Too Little Change

90GE0081A East Berlin ST. HEDWIGSBLATT
in German Vol 37 No 16, 22 Apr 90 pp 1-2

[Article signed "Pr": "Once More: Personal Courage"]

[Text] In the 8 October 1989 edition of our church newspaper, printed on 5 October while the ordered jubilee celebrations on the occasion of the 40th anniversary of the GDR were being staged here, we asked for personal courage in this spot under the heading "What We Need Now."

Since then we have experienced how people who did not want to run away opposed the rulers; how those who were supposed to have been silenced raised their voices. We have experienced more than personal courage: the courage of those whose human dignity was brutally violated during these days around 7 October, and the commitment of many who use every bit of time and strength for democracy to come into being in this part of Germany, to prevent the movement toward freedom from being blocked again by the old forces.

Why recall all that is known? Because it seems necessary to renew the appeal for personal courage especially now.

Callers and letter writers from our Catholic parishes describe to us time and again the following event that now seemingly takes place with variations in many enterprises and schools and other institutions:

There are the old "management cadres": In a number of places the top managers were removed, many of the deputies who in their views and attitudes played the same role in the old system as their bosses now occupy the boss's chair. They discarded the party insignia very quickly, they cleared their records—their personnel records are spotless, no longer anything about renounced relations with relatives in the West (and active collaboration with the Ministry for State Security did not even appear in such cadre records).

Those who had been careerists, free riders, but at any rate beneficiaries of the system—almost always at the expense of the others in whose papers everything that was so desired was always missing—they have thus a real chance for a new beginning. And that is (actually) also a good thing.

The way many of them seem to be willing to take advantage of this opportunity makes a person worriedly sit up and take notice:

While thus far they were committed to the leading role of the party, they now completely switch to the leading role of the market economy suddenly discovered by them, or what they consider to be the market economy. Little could be said against that either were it not for the fact that they do this with the same means and methods as in the past: Those unpopular in the past who regard this kind of "change" with amazement are once again "the fools." In the past they had to be afraid of consequences affecting their employment and for the opportunities of their children, now they have to be afraid again: While the old managers set themselves up in the "management levels" and hand out positions among themselves, they declare the jobs of others unnecessary and prefer to get rid of the inconvenient ones. And when the latter then experience how the slogan of the November demonstrations, "State Security into production" is applied in practice: that many of such State Security "staffers" do end up "in production," but please not too close to the work but rather in management functions—deep resignation has spread now and then in the meantime.

Quite similar observations apply at the schools and in the "middle levels" of the educational system. Christian teachers and parents point out—and are (again!) afraid at the same time—to do so publicly because they find that the old forces band together and are ready to force out anyone who swims against the tide.

If the process of renewal is not to get stuck, if the old power structures are not to become the new ruling structures, we need, again now and especially now, the personal courage of the many individuals in enterprises and schools, in parties and government bodies. Above all don't let us be scared by those who—after they share responsibility for the desolate situation in this state—now appear as prophets of doom and have already scored successes among simple people: Perhaps wasn't it better after all, the so secure life—with the wall and the other wonderful achievements....?

The clear result of the People's Chamber elections was important. But decisive matters take place now, before and after the local elections: It will matter whether enough "new" women and men far removed from power in the past will be found who are ready to assume responsibility in the local area. The possibility for that exists now. Committed Christians, among them many who are in positions of responsibility in our parishes as diaconate helpers and in other ways, already confront such new tasks. We owe them a great deal of thanks for that. They try—as persons without party affiliation and also by participating in the work of the parties—to achieve something new. And they need the support of our parishes, too, but above all they need comrades-in-arms. For only the collaboration of many who are guided by their conscience, who want to help dignity and human rights on the road to success, who set to work with personal courage and do not permit themselves to be infected with resignation—only such committed collaboration holds the guarantee that something truly new, something truly good can be achieved.

That applies to the governmental level, that applies to the local level, kreis, and bezirk and that applies to the areas of life and work of each individual. It also depends on us Christians whether new attempts of the old rulers can be nipped in the bud.

PDS Rally, Views Reported

90GE0081B Frankfurt/Main FRANKFURTER
ALLGEMEINE in German 25 Apr 90 p 3

[Article by Johannes Leithaeuser: "Citizens' Discussion with Gregor Gysi"]

[Text] Halle, 24 April. The PDS [Party of Democratic Socialism] thinks it is again capable of filling public squares with its events. In Halle it did not choose the market square, after all that would have been too spacious. The "citizens' discussion" with Gregor Gysi took place instead at the public grounds ring next to the "flag monument" a corrugated red-lacquered steel plate several meters high. That was also more suitable even

though the party was careful not to appear by itself in the bezirk capital: All were invited but only the New Forum accepted, according to the PDS organizers' eager assurances. Apparently not all the addressees received the invitations; in the city office of the SPD [Social Democratic Party], people said they were not invited. Thus a local spokesman of New Forum was the only one to face Gysi. He said bravely that his citizen movement wants to have relevant discussions with other parties, "if need be also in the lion's den" and will not let itself be taken in. He could not prevent to party chairman from the capital to smother New Forum with his praise.

Large segments of the people have unjustly treated the contributions of the citizens groups to the change, Gysi said, and added to the expression of sympathy the assertion that the PDS has been dealt with similarly even though the PDS has experienced a renewal from top to bottom. The New Forum spokesman had drawn the dividing line differently: Alliance 90, to which the New Forum belongs, cooperates in Halle with the SPD and the Greens in the local elections; the "old parties," CDU [Christian Democratic Union] and LDP [Liberal Democratic Party], also the SED [Socialist Unity Party of Germany] which is now called PDS, are the opponents. The old parties had 40 years to take care of the city; the sad result can be seen. When this remark was made, the many PDS followers at the flag monument grumbled, but their chairman calmed them down: Those who were responsible for the plight after all had long ago left the party. Halle, he said, was a beautiful city in the past, "now it has gone downhill a little, we have to do something about that."

That is how simple local government politics was that evening; Gysi was not embarrassed by questions to explain how all this can be accomplished in detail. His remedy is simple, he was much applauded in Halle: The PDS must be strong in the city halls to constitute a counterweight to the government in Berlin. He said that this is the only way for the municipalities to obtain the funds which they need for reconstruction of housing and promotion of economic development.

In the citizen's discussion only one atmospheric disturbance occurred. When the PDS chairman was supposed to provide information on the financial resources of his party, his answer was drowned out by rolling thunder. Then rain started at the flag monument square.

Dresden Situation Surveyed

90GE0081C Frankfurt/Main FRANKFURTER
ALLGEMEINE in German 24 Apr 90 p 3

[Article by Friedrich Fromme: "Is One Supposed To Vote for Individuals or a Party?"]

[Text] Dresden, 23 April. That things are getting frenzied prior to the local elections, that cannot be claimed at least for Dresden. It is no different in the surrounding countryside of this second largest GDR city—550,000

inhabitants, about 100,000 fewer than before the war. There are almost no new posters.

Have the people grown tired after the People's Chamber elections? Quite a few among the politically active minority regard that as conceivable, but with a subtle distinction to what can be observed in the FRG, namely the weariness that can develop from the frequent elections in a democracy of long standing. Rather, they are now waiting for the big changes in the GDR for which they participated in the People's Chamber elections. Here the politicians probably lack the need, widely held in the West, to make up for a bad election outcome at the next opportunity. Thus the SPD [Social Democratic Party] had just about 11 percent in the city of Dresden. The urgent desire is also absent to maintain a good election outcome at an election on another level; CDU [Christian Democratic Union], DSU [German Social Union] and Democratic Awakening in Dresden had obtained 60 percent of the vote in the People's Chamber elections as against 47 percent on the average in the GDR. It will not be possible to achieve even close this result in Dresden for the reason alone that the DSU has established a separate list while the CDU with the Democratic Reconstruction and the German Forum Party present themselves as "Democratic Union."

The invasion of Western politicians prior to 18 March felt by some to be like the early stage of an occupation thus far has virtually failed to materialize. This may be the result not only of the feeling that "only" local elections are involved but also of the discernment, after the test of democratic maturity which the people of the GDR have passed, they should be permitted to go their own way in peace. Moreover the parties have little money for the local elections; the PDS [Party of Democratic Socialism], the former SED [Socialist Unity Party of Germany], which after all had received 18 percent of the vote in the city on 18 March, does not want to show how much money it has. But the PDS is clearly superior to the other parties in paper work.

First of all, what is important is to make the candidates of the 20 parties or groups known. Most of them are new people, the members of the old city parliament, which was an assembly of statistics just like the former People's Chamber, were not known either but that did not make any difference in view of the system of factions and the predetermined 99-percent result. Getting acquainted with the candidates works better in small meetings. Often they take place without any publicity, sometimes the church makes a facility available.

The people must also familiarize themselves with the new municipal election law which did not go into effect until 7 March. It offers the citizen three votes; he can give them to one candidate but it does not have to be the first one on the list. The votes can be distributed to several candidates of the same or also of different lists. But if there are more than three crosses, the ballot is

void. That is quite a bit for the new beginning. And there are uncertainties: Is one supposed to vote for individuals or a party?

With the new election law the excessive size of the former local parliaments has also been reduced. In the past the city parliament had 400 members. That was tolerable for a city parliament that did not have any say in anything but the purpose of which was to reward functionaries of long standing or also show-off youths with a kind of office. Now the city council has been reduced to 130 members. Where is it possible to find people suitable for the city of Dresden after 44 years of nonexistent democratic practice? That has given much trouble to all parties and voter groups except for the SED/PDS which has become a firmly committed group.

Another uncertainty: The bezirks into which the GDR was divided in 1952 and through which the orders of the center, i.e., the SED, were channeled, continue to exist. No new bezirk assemblies are being elected, the bezirks are to be merged into the five Laender which existed from 1946 to 1952.

The electorate is faced with the peculiar situation that it is supposed to elect local parliaments which will actually have to receive their competence from the Laender—it is hoped they will be reestablished in September and that then Land parliament elections will be called. The Laender, for example, would have to reform the school system and the municipalities as units that support and maintain the schools would have a say in the implementation. It would be a matter for the Laender to give the municipalities planning authority which would be especially urgent right now. The GDR state as a whole and also the nonexistent Laender would have to provide the municipalities with the financial means—as tax revenues of their own and legally fixed supplementary appropriations. Some among the people have the uncertain feeling that with the local parliament they were electing the second before the first: That should really have had to be the Land parliaments.

In this situation it can actually be a good thing for the political associations, the voter groups, the citizen initiatives to become stronger in the local elections than in the elections to the People's Chamber. In Dresden, e.g., the "Group of the 20" runs for office, a group that someday deserves a chapter of its own in the history of the revolution in the GDR. It includes many more than 20 people. The number originates from those, here in Dresden, whom the police beat with truncheons when the Prague embassy refugees passed through and the demonstrators reacted peacefully to the beating and it hung in the balance whether live ammunition would be used. According to credible witnesses, warning shots with blank ammunition were fired. In this situation 20 intermediaries of the demonstrators were appointed who negotiated with the authorities which resulted in the latter giving in. Finally, the group also assumed responsibility for the Roundtable for Dresden, dispatched members of a "basic democratic faction" into the old

city parliament. Working groups developed ideas in the most varied fields, from the duties of the police, the rule of law, to the economy and especially environmental protection in which the group was especially interested.

The group does not want to become a party, but it wants to participate in the local elections. Some of the group have become members of a party, e.g., the CDU, such as their candidate for chief mayor, Wagner, who came from the "Group of 20." In addition, it is rumored, the present chief mayor, Berghofer, will be a candidate; he resigned from the SED and has remained without party affiliation since then. But it is rumored that this is more of a trial run for a later candidacy for the not yet existing office of the Saxon minister president.

HUNGARY

Antall on Warsaw Pact, Gorbachev Invitation, Israel

25000703B Budapest NEPSZABADSAG in Hungarian
14 Apr 90 pp 1, 7

[Unattributed article: "Response to NEPSZABADSAG Question; Jozsef Antall: We Try To Maintain Proper Relations With the Soviet Union"]

[Text] Hungarian Democratic Forum [MDF] Chairman Jozsef Antall responded to five foreign and two Hungarian—including a NEPSZABADSAG—journalists for almost an hour early in the afternoon yesterday. NEPSZABADSAG was represented by Lajos Pogonyi.

The reporter from JOMIURI SIMBUN inquired how the MDF envisions placing the Hungarian economy back on its feet. He also asked whether there are plans for Hungary to leave the Warsaw Pact.

[Antall] "We may discuss a government program only after completion of coalition talks, when the choice of coalition partners is settled, and after reconciling our programs. It is apparent that the government's program cannot be identical with any one party's economic policy program. The government program will be in part specific [as published], and in part a result of compromise. I will not be able to respond in regard to this issue as long as we are able to reach an agreement with the rest of the parties concerning coalition, and in regard to the reconciliation of our programs. We must assess the country's actual economic and financial situation; thereafter we will be able to respond to this question within ten days, based on the economic program we announced, the Bridge program, and the program prepared by the Blue Ribbon Committee, as well as other reconciled programs. We clearly favor the acceleration of privatization; we regard the establishment of the institutional system for a free market economy as important. We must establish foundations for social welfare actions and for the [related] institutional system, capable of balancing the consequences of structural transformation, such as unemployment. Our goal is to maintain the country's

solvency and to harness inflation. This can be achieved only by stimulating the economy and by increasing exports. I cannot say more, because if I did, I would be cutting ahead of coalition negotiations.

"As far as Hungary's leaving the Warsaw Pact is concerned, Hungary already announced this [intent] in November 1956. Accordingly, we regard this issue as a historical legacy, and at present we consider it to be part of negotiations concerning the European security system. All of this is related to the organization, equipment, and situation of the Army. Accordingly, this is a package plan, which represents a problem cluster during the initial period of the government. I believe that there is no doubt about our intent."

[Financial News Network (U.S.)] "What is the economic climate like in Hungary? What would you say to American businessmen?"

[Antall] "I would say that we are awaiting investments and that we support foreign investment, the importation of operating capital. We are doing everything [possible] to establish the legal, economic, and political conditions. Along with our commitments in Europe, we consider it very important that the idea of the Atlantic community prevail. This is not simply a military issue; I want to indicate instead the fact that North America and Europe belong together, including American economic presence in Central Europe. We are awaiting American investors."

[SUDDEUTSCHE ZEITUNG] "What is the meaning of the MDF election poster which calls for spring house cleaning? Would this not affect the old bureaucratic and expert staff?"

[Antall] "The MDF clearly expressed its position in this regard. The political transformation means in part a change in government which consists of the exchanging of the government, the ministers, and the state secretaries, just as in any other country in cases like this. Also, the composition of elected bodies will change. In our judgment the professionals working in the old and in today's state administration need not be afraid. Their knowledge will also be needed by the new government and state administration. Professionals should not move from their places, they should not be afraid! Quite naturally, at the same time we also need new people. All of this, however, must take place within a legal framework. At the same time, economic transformation will be accompanied by privatization and the reorganization of the economy. As far as the posters are concerned, they are remnants of the totalitarian state. Accordingly, please look at them carefully!"

[Italian TV 1] "Transition is a sensitive matter here; not only is the government changing; the system is too. What are your plans for the first 100 days?"

[Antall] "First of all, the government must reassure the populace. It must ensure a balanced transition during the

first 100 days. We must develop the government's legislative proposals which it will submit to Parliament. A package plan to contain the necessary actions to be taken during the first 100 days must be prepared. As far as Hungary's neutrality is concerned, Hungary cannot follow either the Swiss or the Swedish patterns, because those came about under different historical circumstances. Austrian neutrality cannot serve as a pattern either, because that is the result of a state agreement. The issue of Hungary's neutrality arises together with the matter of Warsaw Pact member countries, and this constitutes part of the European security system. A new situation has presented itself, and the matter of neutrality must also be interpreted in a different manner."

The reporter from YEDIOTH AHARONOTH (Israel) inquired whether Antall feels that the invitation extended by the Israeli Government to Miklos Nemeth applies to him. Could we expect to see the new Hungarian Parliament begin its activities the same way the legislature of the German Democratic Republic [GDR] did: to apologize to the Jewish people?

[Antall] "I will begin by replying to the second part of your question. I feel that Mr. Lahav [the editor] is not accurately informed, considering the fact that in 1946 the Hungarian National Assembly created a law to condemn the persecution of Jews, and in conjunction with this it intended to make amends to the Hungarian Jewry. This took place in the framework of a ceremonial meeting, and, I emphasize, the then National Assembly declared this as a matter of law. The Hungarian Parliament did the same at its session last spring, in response to an MDF initiative. Accordingly, the Hungarian legislature has done twice what you are inquiring about. I want to call your attention to the fact that Hungary must not be regarded in the same way as Germany. Holocaust in Hungary began after 19 March 1944, at a time when Hungary was under German occupation. Until that time, the largest Jewish community in Europe lived in Hungary. Tens of thousands of Jews from abroad found refuge in Hungary. As a result of this our country was recognized for the protection it provided in the interest of the Jewry from abroad. My father also received the Order of Jad Vasem. He helped to save several tens of thousands of Jews. There is a memorial plaque in his honor in Israel, and they have planted a memorial tree in his honor. The association of Polish and Hungarian Jews saved from the Holocaust greeted me in a separate telegram on the occasion of the MDF election victory. I am not aware of an act by the GDR between 1949 and 1990 that is similar to the act of the Hungarian legislature. Accordingly, I am unable to accept the question the way it was raised.

"I will, of course, accept the invitation, but only if such an invitation is really extended. Entirely independent from that invitation, I do have an invitation from the Israeli Government in relation to the honoring of my father. I am by all means an advocate of balanced diplomatic relations, and we would like to maintain close, good relations with Israel."

[NEPSZABADSAG] "Mr. Chairman, you have stated several times that 'we will be the best friends of the peoples of the Soviet Union if they take the shackles off our hands.' How do you envision future Soviet-Hungarian political and economic relations? Are Western press reports which claim that you received an invitation from Soviet President Gorbachev true?"

[Antall] "Indeed, along with our commitments to Western relations we will also endeavor to maintain proper relations with the Soviet Union. We would like to settle both the removal of Soviet troops and the issues related to the Warsaw Pact in the best possible way. We feel that it is important for us to strengthen our direct relations with the Soviet Union along with the transformation and modernization of the Soviet state. We intend to establish direct relations with Soviet enterprises, moreover, we are making an initiative so that Western business circles and banks may also utilize the experience we have gained thus far. I have not received any invitation whatsoever from Mr. Gorbachev. At the same time, I was asked at an earlier press conference whether I would accept an invitation from the Soviet Union if I received one. I replied in the affirmative. Then the person who asked the question made reference to the fact that I received invitations from numerous West European and American leading politicians and heads of state. There is nothing specific at issue insofar as a Soviet invitation is concerned. I do not think that the Soviet Union would extend such an invitation before the new government is established. A Soviet invitation may be extended at best after the new government is established."

'Duty To Accept Responsibility' Proposal Text Published

25000695F Szekszard DATUM in Hungarian 8 Mar 90
p 10

["Recommendations by the Independent Lawyers' Forum (FJF) for the Drafting of a Law Concerning Revelation of the Personal Causes of the Hungarian Crisis Situation, and in Regard to the Duty To Accept Responsibility"]

[Text] A broadly based need is being expressed by Hungarian society to identify the persons who created the country's present crisis, and further, that the duty of these persons to accept responsibility be established by an appropriate organization, in a legal manner, consistent with the requirements of constitutional statehood.

A society which endeavors to formulate a constitutional state has no interest or goal in obtaining satisfaction for real or perceived injuries in the form of a popular judgment. Considering the fact that laws presently in force are not suitable in every respect to satisfy this societal need, a law, moreover a law having the force of the constitution, must be framed to fill the legal void and to provide the needed material, legal, and procedural rules and to establish the institutional system needed for this purpose.

The law to be framed must bring an era to its conclusion; consequently, once it fulfills its function it will no longer have a purpose.

There is no doubt about the timeliness of this law; this fact, however, must not provide an opportunity for the creation of uncertainty in society as a result of hasty proceedings. It is the intent of the law to establish an independent system of duty to accept responsibility, without disturbing rules of responsibility which may be established on the basis of other branches of law. As a consequence, the system of legal consequences provided for in this proposed law is peculiar.

I. Time Period Covered by the Proposed Law

The starting date of the period during which conduct manifested may come under the authority of this law is 20 August 1949, the day when the so-called Constitution (Law No. 20 of 1949) gained effect. This is the date when a National Assembly, elected as a matter of formality, created a law that provided for the party-state system. By giving the force of the constitution to the leading role of the Communist Party, it established a public law status for the party and its functionaries.

Since until the 20 May 1988 party conference it was not possible to discuss the substantive examination of the party-state and its institutions, the statute of limitations in regard to conduct under the purview of this law shall start on that day.

II. Scope of Persons Covered by This Law, and Scope of Responsibility

1. In the framework of the proposed law the following persons have a duty to accept responsibility:

- National and county level state and state administrative officials who exercised public power and were empowered as an authority;
- National and county level office holders of the state party, and of so-called social organizations designated in the proposed law (e.g. the National Council of Trade Unions [SZOT] and the Communist Youth Association [KISZ]);
- National commanders of the armed forces and armed bodies;
- Leaders of economic organizations of a national scope whose specific members are defined in the proposed law; and
- National managers of culture, the sciences, and the written and electronic press, and the leading associates of the national institutions of these;

except if they prove that in the course of their activities they proceeded in a manner that could be expected in general from an office holder.

Here the law establishes a well defined group of persons which must not be expanded by way of interpretation.

2. Further, the local leaders of the same organizations have a duty to accept responsibility insofar as it is proven that in the course of their activities they did not proceed in a manner that could be expected in the given situation and considering their function.

III. Procedural and Organizational Rules

1. Organization

A parliamentary committee having nationwide jurisdiction shall be established. It shall include a member of the Supreme State Accounting Office. In addition, one of each of the committee members shall have completed their university level education in the field of law, economics, or engineering. This committee shall proceed with regard to persons who exerted their activities at the national level. (II/1.)

Local autonomous governments shall establish committees. One member of each committee shall hold a degree in the field of law, economics, engineering, or agriculture (as needed).

2. Procedure

(a) Ex officio proceedings shall be initiated in regard to matters over which the national committee has jurisdiction.

(b) Proceedings in cases involving local leaders shall be initiated upon the written proposal of 50 citizens, or some other number of citizens to be defined.

(c) The proceeding committee shall reach a "decision," in which it shall establish the duty to accept responsibility, shall apply a legal disadvantage, or shall discontinue the proceeding. The person subject to the proceeding may challenge in court the "decision" establishing a duty to accept responsibility. The decision rendered by the proceeding committee shall be based on evidence examined by the committee.

(d) Proceedings under (b) above shall not be open to the public, nevertheless the decision shall be made public.

IV. Legal Disadvantages That May Be Applied

The proposed law provides for the application of the following legal consequences in regard to persons whose duty to accept responsibility has been determined:

1. The publication of the condemning decision. Such publication shall include the accurate description of the person condemned and his activity, and shall be publicized in the written and the electronic media.
2. Action to decrease compensation (e.g. the reduction of the rate of pension, salary).
3. Removal from office.
4. Obligation to accept responsibility by surrendering assets acquired (the rendering of real estate, personal property of a high value, works of art as public property).

These legal disadvantages may be applied jointly. The proceeding committee may initiate proceedings at the court having jurisdiction for the determination of responsibility based on other law.

V. Closing Provisions

The proposed law shall go into effect on the date of its promulgation.

The law shall lose force five years after the date of its promulgation.

Budapest, 2 March 1990
Independent Lawyers' Forum

POLAND

Electoral Commissioner on Office Duties, Election Organization

90EP0495A Warsaw GAZETA WYBORCZA in Polish
9 Apr 90 p 5

[Interview with Jerzy Stepień, General Electoral Commissioner, by Dobiesław Rzemieniecki; place and date not given: "The Most Straightforward Elections in the World"]

[Text] [Rzemieniecki] What is the role of the General Electoral Commissioner?

[Stepień] I appoint voivodship electoral commissioners, who are the appropriate organizers of elections and, basically, have the greatest powers. I also decide on interpreting the electoral law, in which I am assisted by a collegium consisting of, in addition to myself, three justices of the Supreme Administrative Court and three justices of the Constitutional Tribunal. Essentially, I replace the former state electoral commission.

[Rzemieniecki] Is the collegium an advisory body?

[Stepień] Not only that. It can also be appealed to against the decisions of voivodship electoral commissioners, and then its rulings are binding. In other cases they are not, but the opinion of such superb experts will be to me nearly always decisive.

[Rzemieniecki] Last Saturday you appointed the voivodship electoral commissioners.

[Stepień] They are judges of voivodship and local courts. The point was that they would be impartial and apolitical persons. The judges will succeed in settling issues outside the courtroom, which will be greatly needed, especially in contacts with political parties.

[Rzemieniecki] What are the tasks of the voivodship commissioners?

[Stepień] They form electoral districts, determine the membership of territorial electoral commissions (corresponding to the former district commissions) and consider complaints about the activities of these commissions. They

will also have to decide, once I define the general rules, how much radio and television time should be allotted to individual parties and groupings for their electoral campaigns.

[Rzemieniecki] The membership of the territorial electoral commissions and the boundaries of the electoral districts will be determined on the recommendation of presidiums of people's councils which, owing to their political makeup, may not be objective. It is even being said that in single-seat electoral districts the winners of elections will be those who determine properly the boundaries of these districts.

[Stepień] This thinking is very much exaggerated. A voivodship electoral commissioner is not bound by the recommendations of people's councils and if the voters are dissatisfied with his decisions, they may appeal to the collegium. Besides, the existing officialdom is aware that this will be the first serious test of its professionalism, competence, and loyalty to local governments. If it stumbles at the very outset, its further retention in the administration of local governments will become doubtful.

[Rzemieniecki] Can citizens' committees monitor the decisionmaking processes?

[Stepień] Of course. They can and should watch over it all so that it may follow due process.

[Rzemieniecki] Will there be problems with balloting and vote-counting?

[Stepień] I do not anticipate any complications: I want to reassure all those who fear them. There have never before been such straightforward elections.

And as for the allocation of seats to the election winners, this essentially reduces to the ability to divide one number by another, and in Poland the art of division is taught in the 4th grade. At any rate, if one does not know how to divide a larger number by a smaller one, he cannot advance to the 5th grade.

[Rzemieniecki] Are special television and radio broadcasts envisaged as part of the electoral campaign?

[Stepień] Yes. The local television news broadcasts will apportion 15 minutes daily to discrete political organizations and parties for their electoral campaign, and the radio programs will set aside at various times of the day from 30 minutes to 1 hour for this purpose.

We have been pondering the ways of discussing local government problems on the national programs and agreed that they should be devoted to explaining the technicalities of balloting and the basic concepts of self-government, that is, that they should provide information instead of propaganda. However, we do not exclude panel discussions with the participation of political parties. But these matters have not yet been finalized.

[Rzemieniewski] How will broadcasts by different parties be sponsored?

[Stepien] We will not charge any fees for programs produced at the official television studio. But campaign organizers may also present programs produced on their own, e.g., films.

[Rzemieniewski] What about persons unaffiliated with any party?

[Stepien] Under the electoral law free access to radio and television is available only for political parties and groupings as well as citizens' committees and organizations and institutions supporting nominated candidates. Thus, individuals who campaign on their own behalf alone cannot count on free access to television.

[Rzemieniewski] Are there any constraints on the conduct of the electoral campaign.

[Stepien] There is only the prohibition against electioneering on the territory of workplaces insofar as this interferes with their normal operations, and the prohibition against electioneering on election day. There are no other constraints.

[Rzemieniewski] And what about printed matter?

[Stepien] Wall posters, inscriptions, and flyers relating to elections are protected by law. They are not subject to prior censorship. If they contain untrue information, the courts may order their confiscation or prohibit their dissemination. Untrue information in the Press must be rectified within 48 hours.

[Rzemieniewski] How will the elections be financed?

[Stepien] The activities of the electoral commissions and commissioners will be funded from the State budget. But the costs of the electoral campaign will be defrayed by the political parties and groupings concerned. Another innovation is the requirement that the costs of the electoral campaign and the funding sources be made public within 3 months from election day. There exist no constraints or prohibitions concerning the financing of the campaign.

[Rzemieniewski] Thank you for the interview.

Mazowiecki Comments on Strong Bond With Catholic Intellectual Club

90EP0518A Krakow TYGODNIK POWSZECHNY
in Polish No 15-16, 15-22 Apr 90 p 2

[Speech by Tadeusz Mazowiecki: "We Are Facing Great Tasks"]

[Text]

[Boxed item: The address published below was delivered on 1 April at the general reports-elections meeting of the Warsaw Club of the Catholic Intelligentsia.]

I have spoken from this podium many times but today it is a special moment for me. I was given the floor here. First of all, I wish to greet very cordially all those present and absent here. I avail myself of this occasion because nowadays I have fewer opportunities of meeting with you but I want to greet all of you very cordially and declare that here are and shall remain my roots. I was the first to enter this room in the fall of 1956. I was followed by Mrs. Natalia. Together with Zygmunt Skorzynski, who is present here, and others, I am a founding member of the Club. To be sure, I do not know whether nowadays the members of the Club whom I know and who are close to me outnumber those who have departed to that bourne beyond which there is no return, beginning with Jerzy Zawieyski. But, as I said, I was here and shall remain here, even after I am no longer the Premier. I was here when I had been interned. I am here now. And I shall always feel linked to this community, which I helped to create and to which I owe so much.

I would like to state that, so far as the general tasks facing us all nowadays are concerned, tasks which in a moment will be discussed by Andrzej Wielowieyski, that I perceive them to lie chiefly in three basic domains.

First, there is the great process of transformations, from totalitarianism to democracy. Transformations which I believe are most far-reaching in Poland among the countries of East-Central Europe. I am sometimes told that others are overtaking us. Let me tell you openly and honestly that I do not have any "lag-behind" complex. I believe that it is the transformations in our country that have been the deepest. Based on my knowledge of the other East-Central European countries, this is indeed so. Our transformations have reached deeply into the political domain and are linked—there being a linkage between the two—to economic transformations which are not as far-reaching in any other Central European country. We shall continue to consistently promote these transformations, and in a manner at that which is eliciting respect from the world and giving Poland a genuinely good name. I was able to ascertain this in nearly all my journeys. This style of accomplishing consistent and decisive changes in a peaceful manner, without inciting a surge of hatred, is eliciting tremendous respect for Poland.

The second domain of great changes is precisely the economy. I think that the accomplishments so far are in practice reflected in the halting of inflation. If this is consolidated, it is a very great thing which enhances recognition of Poland. But economic restructuring, broad-scale privatization which will revitalize and revivify our economy, is a crucial issue. At the moment this is the fundamental task: to counteract the recession and revive the economy. I would also like to declare to our community, where I have taken the floor so many times, that the concept of the social market economy which I mentioned in Sejm was not mere phrase-making to me. I believe that we must work toward such a social market economy. But first we must emerge from this great crisis. Conditions should be created for achieving

not so much in the sphere of production as in the sphere of distribution, and above all of distribution for social purposes, that which can be defined as the social market economy.

The third great domain of activity concerns Poland's place in the evolving and changing Europe. I believe that Poland is and can be a highly important factor in the new European order. Particularly during my last trip to North America I stressed that Poland should be appreciated as an element of that new European order—a Poland that is bordered on one side by a Germany that is becoming unified and on another by a Soviet Union that is undergoing great changes with as yet unforeseeable consequences. And also a Poland that is facing great changes in Central Europe, changes that are affording a tremendous opportunity but are not free from perils, including the peril of a reversion to "Balkanization," of the renaissance of various ancient conflicts among the nationalities and countries of East-Central Europe. Poland in that area and in that process of rapprochement of two parts of Europe can be a major element of European policy, of the nascent new European order. This new European order has to be worked out together with a system of collective European security whose outline no one can yet conceive but which must replace the traditional division into military blocs.

And this creation and strengthening of the new role of Poland in a new Europe is the third great task facing us as a country and a state.

Lastly, I wish to state that in the inception of this process of the recovery of independence I perceive the great role of the people, the tremendous significance of the fact that the Polish society is showing such understanding of the existing difficulties. I also perceive the tremendous significance of the fact that the proactive individuals who have committed themselves to working for the government, for various offices, and for the Senate and Sejm, include a sizable proportion of persons whose way of thinking was formed precisely here, in this and other Clubs of the Catholic Intelligentsia. I think that these persons—we all—sense the value of this contribution and of our attendant personal growth. I wish also to acknowledge the contributions of those of my colleagues who continue the work of the Clubs of the Catholic Intelligentsia while others among us had to occupy ourselves with other work. I am thinking with great esteem of these colleagues, and especially I want to mention Stanisława Grabska and Stanisław Latek.

I believe that this Club, meaning both its older and its younger members, should perceive the tasks it faces, and especially these great formative tasks. It will be increasingly important not only to demolish the relics of the totalitarian system but to build. That will be a more difficult task, but it is so important to creating our nascent democracy. And only persons with stalwart convictions can cope with this task. I think that providing assistance in this building and creation is a great task of this and other Clubs of the Catholic Intelligentsia. That is what I wanted to say, and also to greet very cordially all and each of you separately.

GERMAN DEMOCRATIC REPUBLIC

Force Reduction Problems Surveyed

90GE0077A East Berlin NEUES DEUTSCHLAND
in German 20 Apr 90 p 7

[Article by Frank Marczinek, under secretary for disarmament: "Military Roundtable With a Lot of Unknown Edges"]

[Text] Even to representatives of the 89 Appeal it was astonishing that in the latest variant for reducing the strength of the NVA [National People's Army] presented at the Military Roundtable, the Appeal's radical demilitarization idea was taken up and scrutinized for its implementability. As was determined, eliminating the equipment of the Armed Forces will take 10 years. About 3,400 employees and 300-400 security force members are needed for this. A somewhat longer time period is required for the existing 300,000 tons of ammunition.

Upon closer consideration it showed what an extensive field the conversion represents. Prof. Hensel of the Advanced School for Economy stated in his expert report that although the "special production" (armament production) of the GDR represents "only" one percent of the production of goods, that is still M 5.5 billion! The NVA's cancelling of arms contracts means enormous losses for some enterprises. For example, the shortfall for Spezialtechnik VEB [State enterprise] in Dresden amounts to more than M 500 million—without secondary losses.

At that time there was still a lot of guessing when the talk turned to an office for conversion and disarmament. Meanwhile, the cabinet has confirmed that one will be created. The office is to be conceived by May of this year and then begin its work. How very urgent this is is shown by the fact presented by Col. General Goldbach about the ongoing disarmament. The elimination, begun as early as the beginning of 1989, of 600 tanks and 50 fighter aircraft is nowhere near completion. Personnel and technical problems appear to be the obstacles here. For instance, the question is asked, among others, whether it is more effective to scrap the Ural 375 D and other military equipment or to give it back! The need for comprehensive technical leadership is thus obvious. The minister wants to meet it by creating a Technical Office in the NVA.

However, a far more important issue concerns the people affected. For that, a comparison of the situation in the GDR and FRG (see the table).

NVA Strength	about 130,000	Bundeswehr Strength	490,000
Professional cadres	about 60,000		240,000
Civilian employees	about 50,000		100,000

Civilian employees in NVA enterprises	about 10,000		—
Special production in civilian enterprises	about 100,000		200,000
Total	220,000		540,000

(Data according to information from the Roundtable; SOLDAT UND TECHNIK 2/90. p 81; NEUE ZEIT 7/90)

The statistics show that in both German nations—without the allies—about 760,000 people are immediately affected by disarmament and conversion processes. Assuming that each "militarily oriented employee" has at least one to two dependents, this problem affects a good 2 million people directly or indirectly. To some extent they live in areas which would be depopulated without the Army (example Eggesin: 9,100 inhabitants, 6,000 of whom have "something to do" with the Army). In my opinion, fundamental decisions must be made in this respect.

In so doing it is essential that this takes place long before the Army is "disbanded," or else "an enterprise which successfully produces space ships cannot cope with the manufacture of simple sausage machines" (NEUE ZEIT 10/90). Instances of cadre losses, as in Soviet tank factories, will also take place in the Neubrandenburg repair plant (800 advanced school and specialized cadres are "superfluous" here) or in the Riesa equipment and tool factory (with 50 percent engineers).

This list is only a tiny fraction of the questions which must be solved. For this reason there must be global thinking and local action.

The multitude of scientists in GDR institutes should determine the location of research by the shortest route. An institute which is to be allocated to the Office for Conversion must centrally control these processes and assign specific short-term research projects. The implementation will then be conducted by the Office for Conversion.

The city and community councils should immediately analyze their situation with industry and public education and tackle solutions. There could conceivably be an employee who controls this complex process. Financing takes place through society, since it has created the Army and must, unless it wants to abandon its own "child," retrain it into a healthy, educated "worker." In the short term conversion will require money and clever ideas. In the medium term it will release people and capacities, and in the long term it will benefit the environment, peace and security. As we know, the 89 Appeal took up this problem in February in Berlin and passed a seven-point plan. It shows the way toward gradual demilitarization.

Many spoke months ago of visions instead of divisions, which are merely illusions. Time will show us what can be done. Today, the question is not whether there should be neutrality, membership in NATO or the Warsaw pact or UN status, but it is a matter of eliminating military thinking and existence. The conversion belongs to the

future; whether gradual, unilateral or on equal terms are questions of form, which only determine how but not in which direction.

The "conversion science" will have to get going, unless it wants to become the whore of military policy.

GERMAN DEMOCRATIC REPUBLIC

Aspects of Prospective GATT Membership Studied

90GE0059A East Berlin AUSSENWIRTSCHAFT
in German 28 Mar 90 Supplement pp 1-13

[Article by University Lecturer Dr of Laws Hans Juergen Mueller, Potsdam-Babelsberg: "GATT Membership as a Legal and Organizational Prerequisite for the GDR's Integration Into the Global Economy"]

[Text] Economic reform requires not only that internal legal rules be revised but also that commercial and foreign trade laws be made to conform to currently recognized international rules. This applies in particular to the General Agreement on Tariffs and Trade (GATT), even if immediate participation is not possible.

Even though the GDR—after the creation of an economic and monetary union of the two German states, respectively, or after making Germany a unified state—appears to be headed toward EC membership, this basic requirement remains unchanged. On the contrary, the very probability of such a course requires an energetic and extensive adaptation to the realities of international relations, by shedding the former, ideology-mandated restrictions which have kept the GDR from becoming integrated into the global economy.

The General Agreement on Tariffs and Trade

Today's international trade relations are greatly affected by GATT. Its principles and standards, the way this agreement functions and its procedures provide a general legal and organizational basis for the conduct of foreign trade. GATT signatories are responsible for roughly 85 percent of all international trade. Currently 98 states are members. One country (Tunisia) has announced its intention to join provisionally. Another 28 states are observing the agreement on a de facto basis.

The General Agreement on Tariffs and Trade was worked out simultaneously with negotiations on the establishment of an International Trade Organization (ITO) and signed on 30 October 1947. It became effective on 1 January 1948 and was to remain in effect until rendered redundant by the Havana Charter; actually, it represents an early implementation of that Charter's chapter on world trade. As is known, the Havana Charter never materialized and this temporary provision, therefore, became permanent.

In the mid-fifties a second attempt to create an international organization competent to deal with world trade (OTC) [Organization for Trade Cooperation] failed, and GATT—originally merely intended as a legally binding international treaty—itself developed an organizational structure and became an international organization, without thereby adversely affecting its function as a multilateral trade agreement.

While GATT concentrated in the first years of its existence primarily on the reduction or partial elimination of tariffs, its orientation later changed, not the least because a series of multilateral negotiations succeeded in considerable lowering tariffs worldwide. It now started to deal with an increasing number of other than tariff-related restraints of international trade. The Tokyo round of discussions (1973-79) created numerous rules, particularly in the form of codices, which went beyond or concretized the provisions of the General Agreement; however, they were not accepted by all parties to the GATT Treaty.¹

Efforts in this direction continued in 1986 with the start of the Uruguay round of discussions, which are scheduled to be concluded in 1990. The aim of these discussions—unchanged from the seven preceding rounds—is the further reduction of tariffs and to make existing GATT rules more precise. This includes the problem of protective clauses which the Tokyo discussions were unable to solve. The negotiations also deal with other items, which the General Agreement does not address at all or only inadequately, such as trade-related aspects of investments and intellectual property.

Extremely relevant is the initially highly contested inclusion in the negotiations of international trade in services. The objective is to liberalize and extensively open up this area by creating internationally-agreed-on standards in a field which heretofore was almost exclusively controlled by national regulations and, consequently, shielded against the outside.

The General Agreement is based on a neoliberal concept of international trade, according to which tariffs constitute the most important—and, in perspective, the only—instrument of taxation in foreign trade. It is the goal of tariff reduction negotiations to reduce and, finally, to completely eliminate this instrument as well. However, this "ideal concept" must be compromised in many ways by allowing state intervention by other means than tariffs (custom duties). However, protection of the national economy by means of quantitative restrictions is in the nature of an exception and only possible under certain conditions specifically defined by the agreement.

The negotiated tariff reductions are incorporated into lists, which become an integral component of the General Agreement, so that they can no longer be raised again unilaterally. Each GATT signatory power is entitled to these fixed tariffs, both as a consequence of the most-favored nation treatment, pursuant to Article I, Paragraph 1, and by direct entitlement, pursuant to Article II. Both, the most-favored nation treatment and direct entitlement to the listed tariff concessions, serve the realization of the nondiscrimination principle which permeates the entire agreement. The same trend is furthered by the equal treatment afforded both domestic and foreign goods within a country (regime nationale).

To maintain flexibility the General Agreement relies on a differentiated system of legal obligations. These obligations came into being either as a result of individually differing commitments or by allowing in various ways to exempt treaty partners, individually, in groups or even in their entirety, from certain obligations either temporarily or indefinitely.

So far the General Agreement is not yet absolutely in force (as provided by Article XXVI, Paragraph 6). This condition is not likely to change in the foreseeable future. With regard to original members, the protocol of 30 October 1947 for the provisional application of the treaty serves as a basis.² This protocol calls for the unconditional application of Parts I and III (Articles I and II and Articles XXIV-XXXV) as well as the application of Part II (Article III-XXIII) "to the greatest extent possible without violating existing laws." Collective or individual accession protocols, containing corresponding determinations, were concluded with states which joined subsequently. Part IV (Article XXXVI-XXXVIII), which was added to the agreement subsequently, is also to be applied unconditionally; however, some signatory powers hesitated—even after it came into force on a *de jure* basis in 1966—to accept this amendment.

The differentiated commitment of individual treaty signatories to Part II of the General Agreement led initially to considerable differences in respective obligations of the signatories with regard to the area not subject to tariffs. Subsequently, however, these differences were gradually removed, at least between the major world trade powers, largely because of the codices established by the Tokyo round of negotiations. However, these codices, in turn, led to further differentiations with regard to those states which did not accept them.

An additional differentiation with regard to rights and obligations is created by a country's manner of participation in GATT. While observer status does not grant—at least not so far—any of the material rights or obligations accruing from the General Agreement; agreements in the form of protocols are concluded with associated states, or with those who join either provisionally or absolutely. These agreements define both material and procedural obligations. In case of association status, interested member states and the associated state conclude a multilateral trade agreement which uses the General Agreement as a model; in case of states joining provisionally, an agreement is reached between the provisionally-entering state and interested member states concerning the extent to which GATT rules should apply in their mutual relations.

The association status and the provisional membership status are forms of participation for countries whose economic system does not yet permit full membership. Such participation is primarily useful for gathering experience, on the basis of which possible additional steps may then be decided. The terms of such arrangements are generally limited. This also applies principally to *de*

facto membership. Such membership, however, is only possible for those countries in whose territory the General Agreement had already been applied before that country achieved its independence; in other words, for former colonies. Such countries are treated by the signatories just like member states as long as they, in turn, act like member states. In case such countries decide to become full members later, they are entitled to take advantage of simplified membership application procedures.

It is practically impossible to achieve full membership status in GATT immediately. Membership is first negotiated on the basis of concessions and demands. The results of these negotiations are recorded in so-called membership protocols which contain the obligations of the new member—the so-called entrance fee—as well as the obligations of the previous member states toward this country. The "entrance fee," aside from various procedural rules, consists primarily of tariff concessions which are made part of the new member's tariff list. Obligations to increase imports quantitatively—which were agreed to when Poland and Romania became members because neither disposed over any custom tariffs—neither conform to GATT principles nor have they proven themselves to be effective. They cannot be considered as a basis for defining the obligations of new members.

After membership becomes effective, and this also applies to other forms of participation, a period of transition of several years generally commences. During this period the new member, as well as the other signatories, adapt their mutual relationships to the new situation. The new membership is frequently associated with far-reaching changes of national laws and the economic system. The obligations of the previous members, on the other hand, are usually confined to the removal of quotas and other restrictions not related to tariffs.

The differentiated system of rights and obligations arising from the General Agreement—outlined above as aspects of different forms of participation—is already an indication of GATT's high degree of flexibility and adaptability.³ However, anyone who concludes that all this points to an erosion of GATT, completely misunderstands the situation. It is in all probability just these internal adjustments which enable GATT not only to continue its existence but also to increase its authority and influence significantly—notwithstanding the demand made by many sides to tighten GATT discipline.

The Advantages of Membership in GATT

The large number of states which joined GATT, the forms of participation utilized by numerous other countries, as well as official applications for membership from additional countries (including the Soviet Union, the People's Republic of China, and Bulgaria) suggest the question about the advantages of membership. The following applies:

1. The right not to be discriminated against: This is primarily expressed by the general, unconditional, and multilaterally recognized claim to most-favored nation status as defined by Article I, Paragraph 1. Such an agreed-on most-favored nation treatment is more advantageous than a bilateral agreement to that effect and can only be rescinded in exceptional cases.

If this right is denied, arbitration proceedings may be initiated in which a decision is reached on the basis of legal principles and which, therefore, are to a large extent objective. The most-favored nation treatment also extends to all preferential tariff arrangements that treaty members grant each other—which is also clear from the supplementary direct entitlement to listed rate concessions (Article II)—and, consequently, to any concessions negotiated in the future.

However, its relevant area of application is limited to objects included in the General Agreement. It does not, therefore, include merchant vessels, the treatment of which is frequently the subject of bilateral trade agreements. However, on the basis of Article XXXV it cannot be assumed that GATT membership will automatically assure that the new member will be treated this way by all member states. But its negotiating position is definitely improved.

Since the most-favored nation status is restricted by GATT to tariffs, its importance is reduced proportionally as tariffs are lowered.

2. The right to nondiscriminatory treatment in areas not subject to tariffs: This right increases in importance proportionally, on the one hand, as tariffs are further reduced and, on the other hand, as the number and types of trade restraints unrelated to tariffs increase. The applicable rules in this area are contained in Part II of the General Agreement. They are, therefore, subject to the reservation concerning conflicts with national laws. However, this restriction is not all that important since most states have amended their conflicting domestic regulations to make them conform to corresponding GATT rules. This happened frequently through the codices of the Tokyo round and, consequently, applies only to those who subscribed to them. However, any GATT member can join these codices.

Particularly important nondiscrimination provisions of the General Agreement for non-tariff-related areas are the equal treatment rules for foreign and domestic products defined in Article III and the nondiscriminatory application of quantitative restrictions pursuant to Article XIII.

While the most-favored nation right (Article I) and the direct right to listed tariff rates (Article II) result in the equal treatment of foreign products of different origins, and while Article XIII also has this effect, Article III expands the system to the treatment [of products] within a country (*regime nationale*).

3. The opportunity to have an effect on the legal rules relating to world trade by:

- Participation in multilateral trade negotiations such as the Uruguay round, which is only possible for GATT member states, even though one's ability to affect the outcome should not be overestimated since the largest world trade powers also have the greatest leverage.
- Taking advantage of the right to consultation with other GATT signatories with regard to any subject considered relevant and not only to accuse another of having violated GATT rules [and of the following additional rights:]
- The right to avail oneself of the conflict resolution/arbitration system in accordance with procedures prescribed by the General Agreement and also—if it concerns a matter regulated by a codex and assuming the appropriate membership status—of the additional opportunities provided by the respective codex.
- The right to ask for GATT's support in enforcing claims recognized by such proceedings.
- The right to ask for negotiations concerning the modification of rate-concession lists, pursuant to Articles XXVIII and XXVIII to, or on the basis of, special rules of a membership protocol [as written].
- The right to participate in voting procedures and to present one's own point of view in meetings of TREATY SIGNATORIES (when written in this manner it always involves GATT's highest organ—something like a committee of the whole) and of the GATT Council; however, formal votes are rarely taken since the consensus principle applies in most cases. In case of membership in secondary GATT agreements (codices, multifaceted agreements) corresponding actions may be provided for.

4. The right to be informed by other treaty signatories of matters of importance to the formulation of that country's own foreign trade policy (Articles X and XV).

As an important aspect of international trade or economic policy, GATT cannot be replaced on a short or medium-term basis. Other forms of long-term solutions also cannot—to the extent that they could be considered at all—be implemented without these institutions or bypass them. The UN Conference on Trade and Development [UNCTAD] is not even a conceptual alternative and other institutional solutions are not on the horizon. Anyone who wants to have an influence on the legal framework of world trade can do so only by participation in GATT and by the agreements for which GATT provides the structure.

Third-party states are more and more becoming outsiders even though they, too, are bound by GATT rules to a certain extent. They can, of course, enjoy corresponding advantages through bilateral agreements (e.g., through trade agreements)—provided they can find a willing partner—but these can never be as far-reaching as those provided by the General Agreement.

GATT terms, unilaterally granted to third-parties by some states and by the EC, have the disadvantage of not being protected in any way by international law. They can be withdrawn at any time and without explanation. It should also be mentioned that the states associated with GATT are becoming increasingly unhappy about countries which want to enjoy the privileges without assuming corresponding obligations.

The rules and procedures of the General Agreement contribute to a large extent to economic stability, and to the clarity and predictability of international commerce. Thus, GATT is an important factor in the creation of an international economic system of the future. Viewed in this way, it becomes an indispensable institution.

The elimination of all forms of economic discrimination and protectionism has long been high on the list of the GDR's demands for the democratic restructuring of international trade relations. It was repeatedly requested that granting most-favored nation status not be coupled with political demands. However, in view of the fact that the General Agreement with regard to international trade constitutes the most extensive complex of nondiscriminatory and antiprotectionist rules and procedures the credibility of a state would suffer seriously, if the state making such statements made no concrete efforts toward their realization. Participation, therefore, makes sense not only for foreign trade but also for reasons of foreign policy.

Participation in the General Agreement, in the last analysis, requires the transition to a system of commercial and foreign trade laws which conforms to GATT principles; that is to say, when restructuring a system, which needs to be changed in any case because of conversion to a market economy, the rules of the General Agreement should serve as guidelines. Compatibility with the legal structure of international trade, and also with the legal system of other countries to the extent that it relates to foreign trade, can thereby be achieved. In view of possibly joining the EC as well as developing closer ties to the Federal Republic—and, even more important, in view of the trend toward a single German state—there is a need for basic correspondence with FRG's legal rules and regulations which, in turn, correspond to those embodied in the General Agreement.

However, GATT rules are not only important for trading with developed capitalist states. CEMA countries are also moving toward a market economy and, therefore, utilizing the rules and procedures embodied in the General Agreement to an ever greater extent even in their relations with other CEMA members.

In the future market economy principles will also dominate in relations with developing countries. This applies not only to trade on the basis of mutual benefits, but also when preferential treatment is granted. This would also eliminate previously debated problems since the amount

of GDR aid to these countries—to the extent that it took the form of trade—could not, in any case, take the form of preferential tariffs.

Obligations Arising Out of Membership in GATT

In order to enjoy the benefits of GATT membership—and this also applies in a corresponding degree to lesser types of participation—a country must assume specific responsibilities. The greatest substantive problem in joining GATT is, therefore, the "entrance fee," i.e., the obligations to be assumed. The GDR's situation is not unfavorable since it is already, for all practical purposes, treated like a GATT member by a number of countries or groups of countries (e.g., by the EC), at least with regard to tariffs. There are many bilateral trade agreements which embody the most-favored nation principle. To ask again for "an entrance fee" or a surcharge would be unfair. However, those countries, which so far have not afforded the GDR such treatment, would be entitled to ask for concessions which would then benefit everybody because of the most-favored nation status.

Here it must also be considered that the extensiveness of concessions also depends on the current volume of the mutual trade. If the level is low, a country cannot ask for too much. From this one may conclude that the total obligations to be assumed cannot be very extensive quantitatively. But that says nothing about their nature.

While in the past some countries with centrally planned economies have entered into the General Agreement on the basis of commitments to raise imports (Poland and Romania), others have restructured their economy toward a market economy (Yugoslavia, Hungary). The entry conditions defined for Poland and Romania were primarily politically motivated and were supposed to enable these countries to become more thoroughly integrated into the global economy. This approach was not a success from an economic point of view, neither for the GATT members nor the countries themselves. Consequently, both introduced tariffs subsequently to replace their quantitative obligations by taxes which conform to market conditions.

The situation is similar with regard to Czechoslovakia. That country joined GATT in 1948 on the basis of tariff concessions and later—tolerated by most treaty signatories—introduced a centrally planned economy; however, Czechoslovakia has been asking for some time now for the recognition of custom tariffs as an instrument for taxing imports. In connection with the desires of Bulgaria, the People's Republic of China, and the Soviet Union to become members, it became obvious that membership could only be affected on the basis of market-related concessions. This also applies to other countries. Thus, with the transition to a market economy the possibility of GATT membership also exists for the GDR.

Tariff Obligations and Custom Values

Although there can be no doubt about the type of obligations to be assumed when joining GATT, the form of the tariff commitments to be agreed on remains undefined. So far the GDR has no custom tariffs, but even their existence would not necessarily solve the problem. This is especially true for the tariff rates to be assigned to individual items. It is not at all easy to estimate the degree of protection afforded thereby and even the fiscal aspects remain extremely vague since empirical data are necessarily missing.

These uncertainties do not, by the way, affect only the GDR but also its trading partners who would, naturally, be interested in keeping the level of protection low. One can, of course, make use of other countries' experiences but only to a limited degree. Especially a country's economic peculiarities account for differences.

These differences include the volume and structure of imports; the trade policy adopted—or to be adopted—toward the source of imports as it relates, for instance, to preferential treatment; opportunities for substitutions and diversification; trends in demand and consumption. Not to be underestimated is also the importance of the type of treatment accorded the importing country by the major suppliers of the respective products with regard to its exports.

From all this it follows that the transition to an effective tariff system, that is to say a tariff system which tends to regulate imports by means of price—assuming that tariffs already exist—takes some time. An equilibrium that all participants would consider fair, can only emerge after a certain amount of experience has been accumulated. This requires a transitional period during which an effective tariff system evolves step by step.

A nomenclature constitutes the basis for any tariff. It serves to classify, systematize, and codify all traded products. The assignment of specific tariff rates to specific products or types of products is a second step toward the creation of a tariff system.

Since the International Convention on the Harmonized Commodity Description and Coding System⁴ went into effect on 1 January 1988, most states have started to adapt their national nomenclatures to this six digit multipurpose nomenclature, which can not only be applied to custom duties but also to freight, insurance, foreign trade statistics, etc. The problems caused by the incompatibility of the 17 different nomenclatures used heretofore are thereby eliminated.

The harmonized system is primarily based on the Brussels Tariff Nomenclature (BTN)⁵ which was created in 1950 at the same time as the Customs Cooperation Council (CCC) for the purpose of cooperation in the area of tariffs and became effective in 1959. In 1974 its name was changed to the "Nomenclature of the Customs Cooperation Council (CCCN)."

The harmonized list contains 5,019 product groups which can be identified on the basis of the six digit numerical code. The list is also subdivided into 21 sections and a total of 99 chapters which comprise 1,241 items and additional subsidiary items.

Also included in the list are:

- Six general interpretive rules;
- comments which concern specific sections, chapters, items and subsidiary items or serve to define their extent and limits; and also
- a list of items arranged systematically which, to the extent necessary, also contains subsidiary items.

The list is supplemented by several publications which are designed to expedite its use and to assure that it will be uniformly interpreted and applied. These are:

- Explanatory comments;
- an alphabetical index;
- a correlation table between the list and the Standard International Trade Classification (SITC), Second revision, recommended by the UN for use in foreign trade statistics; as well as
- a product description list.⁶

The assignment of specific rates to individual tariff items can be simplified by foregoing a differentiating approach. While such a tariff can be constructed relatively quickly, it does not do justice to the needs of the national economy for differentiated protection. However, during the transition from a planned to a market economy, the respective specifications are, in any case, rather based on guesswork than on precise determinations. The creation of provisional tariffs with little diversification is, therefore, definitely worth considering.

Currently tariffs consist almost exclusively of import duties. While transit tariffs are specifically prohibited by Article V, Paragraph 3 of the General Agreement, most states also do not levy export duties since such tariffs would make the exported goods more expensive and affect their ability to compete internationally. On the contrary, a variety of export promotions attempt to help maintain positions in foreign markets or assist in the fight to enter new markets.

By viewing tariffs in accordance with their economic purpose, they can basically be divided into economic tariffs and revenue duties.⁷ While revenue duties are primarily designed to raise income, economic tariffs serve as an instrument of economic policy, especially of foreign commerce and trade policy, by attempting to influence the pattern of production and consumption.

Protecting the domestic economy, and particularly producers, is a primary purpose. Economic tariffs, therefore, are primarily protective tariffs which improve the position of domestic competitors vis-a-vis foreign competitors, since the price of the imported product is increased

by the amount of the tariff.⁸ Revenue duties are predominantly levied against goods not produced within the country. For instance, states in moderate climate could have tariff rates for such items as tropical fruit, tea, and coffee. Revenue duties, aside from their fiscal nature, are also luxury taxes.

Today tariffs are primarily based on ad valorem duties. These are calculated on the basis of the value of the product and defined as a specific percentage of that value. It is, therefore, very important which of the value-producing components are included. A general guideline is contained in Article VII of the General Agreement, which refers to the "real value of the imported product," that is to say to the price at which a product would be sold or offered in normal markets under conditions of free competition. However, this rule did not prevent greatly diverging methods of establishing value, since the proviso of the preeminence of national laws applies.⁹ Even the Brussels definition of tariff value¹⁰ was not generally accepted and, therefore, an ad valorem tariff codex¹¹ was negotiated during GATT's Tokyo round. Today this codex constitutes the basis for determining ad valorem duties in the countries which are most important to world trade.

The ad valorem codex provides for the application of five hierarchically arranged principles of assessments. The importer only has the right to choose between the fourth and the fifth methods. The principles are:

1. Basis of the transaction value, which is the purchase price, adjusted by the option to correct for such special costs as packaging, licenses, freight, etc.
2. Using the transaction value of the same type of product when exporting to the same country.
3. Determination of the transaction value of similar products.
4. Application of the deductive or subtraction approach; this means that several price components, such as general, freight and other insurance costs, are deducted in the importing country from the selling price of the imported product or from the same or similar products.
5. Determination of a calculated value, starting with production costs and adding certain amounts for such items as profit, overhead, etc.

If none of the principles is applicable, the tariff value should be estimated in accordance with Article VII of the General Agreement and by observing the general provisions of the ad valorem codex. Using the price of the same or similar products in the country of import as a basis is expressly excluded under any circumstances. The GDR's method of basing licensing fees¹² or custom duties¹³ on the retail price within the GDR is contrary to these provisions. An analysis by the GATT secretariat came to the conclusion that the transaction value is used internationally for roughly 95 percent of all imports.¹⁴

Value determination methods provided by the ad valorem codex leave it to the discretion of the states whether to use the FOB price, as in the United States, or the CIF [cost, insurance, and freight] price, as in most Western European countries. Since the CIF method includes freight and insurance in the price, the calculated transaction value, or some other value used in setting tariffs, is higher than it would be if the FOB method were used. Therefore, a higher tariff rate can—if the value is based on the FOB method—lead quite possibly to lower custom duties than a formally lower tariff rate would if the value were calculated on the basis of CIF prices.

Product Origin Rules and Tariff Procedures

Import regulations based on a tariff system normally assume the existence of country-of-origin rules, especially when the tariff provides for different rates for the same goods from different sources. This is intended to prevent to a large extent that products, which are not entitled to preferential treatment, nevertheless enjoy such treatment.

Basically one needs to distinguish between goods which are produced entirely in one country and goods which are produced in two or more countries or which have components which come from different countries. Whereas the verification problem in the first case can be solved by the presentation (and acceptance) of a certificate of origin, the other cases rely on the criterion of significant modification. This is applied differently from one country to another but two basic forms predominate.

The West European countries and Japan use a processing criterion, according to which products made of raw or semi-finished materials from countries which are not entitled to preferential tariffs and are then further processed in a country which does enjoy such preferential treatment, the claim for preferential rates will only be granted if the finished products are classified under a different code number than the earlier products. This general rule is in most cases accompanied by lists of exceptions, which determine among other things under which conditions a change of the tariff position with regard to the product's country of origin becomes irrelevant.

It is also possible to make up lists for all those products which require technical processing or refining procedures, which, if applicable, either establish or preclude a specific country of origin. Both variants are clear and straightforward. They do, however, require the considerable effort of producing and constantly updating the relevant lists.

Country-of-origin rules are particularly important in connection with free trade areas. They form the basis for deciding whether products traded between partner states, if they contain materials from third party states, are exempt from or subject to custom duties. Although the criterion of complete production is already inapplicable even if the product contains only traces of a third

party origin, the processing criterion is very important in the EFTA [European Free Trade Association], for instance.

Since the rule regarding a change in tariff position would be too rigid in its absolute form, lists A and B were created. List A enumerates all the negative exceptions; namely cases in which further prerequisites must be met in addition to the treatment or processing steps, which bring about a change in the tariff position, before a product can be considered an original product because of such treatment or processing. List B comprises cases in which a specific manufacturing process does not change the tariff-classification number but, nevertheless, allows the product to be treated as if it had met the country-of-origin requirements.¹⁵

In other countries—the United States, Canada, Australia, and New Zealand, for instance—the necessary changes are determined on the basis of percentages. Either the value of the imported materials (raw materials or semi-finished products) may not exceed a certain percentage or the value of the domestic material and certain production costs incurred within the country must add up to a specific minimum percentage. This amount is usually between 50 and 95 percent.

This method represents, in the final analysis, a comparison between the value of the imported material and that of the finished product. It can also be combined with a method based on the processing criterion. Its advantage lies in a relatively uncomplicated prior determination of the value of the imported goods. It can, therefore, be applied precisely and easily. Disadvantages include fluctuations in the price of raw materials and in the value of currencies. Different pricing principles also complicate its application.

Basic rules concerning the origin of products can be found in Annex D.1 of the International Convention on Simplifying and Harmonising Tariff Procedures of 18 May 1973¹⁶, while Annexes D.2 and D.3 concern questions relating to verification of origin and its control. This convention, frequently called only by the name of the city where it was signed (Kyoto), consists of a basic convention and, currently, 31 annexes. The basic convention defines the obligation of the contracting parties "to promote the simplification and harmonization of tariff procedures and, to accomplish this goal, to comply under the conditions specified by the convention with the standards and practices recommended in the annexes"; each signatory is free to grant even more extensive relief (Article 2). The enforcement of restrictions and prohibitions provided by national laws is not thereby excluded. Article 8 provides that those annexes, which a treaty party has accepted, become part of the convention as far as that party is concerned without requiring that this party accept all annexes. For a state to join requires merely the acceptance of the basic convention and one of the annexes. Many annexes were not

drafted at the time as the convention but later and not all of them are in force. The following specific annexes are involved:

A.1 Custom formalities before the custom declaration is submitted; A.2 The temporary storage of merchandise; A.3 Custom formalities concerning commercial means of conveyance; A.4 Custom formalities concerning naval stores and tourist needs; B.1 The release of merchandise intended for the free market; B.2 The exemption from duty of merchandise intended for the free market; B.3 The reimportation of merchandise in its unchanged condition (returned merchandise); C.1 Final export; D.1 Country-of-origin rules; D.2 Validation of country of origin; D.3 Subsequent control over the certificate of origin; E.1 Shipment of merchandise subject to customs; E.2 Transshipment; E.3 Custom storage; E.4 Drawback; E.5 Temporary import and reexport in its original condition; E.6 Temporary import for active improvements; E.7 Duty free procurement of replacements of raw materials for production; E.8 Temporary export for passive improvements; F.1 Free Trade Areas; F.2 Transformation traffic; F.3 Custom concessions for tourists; F.4 Custom formalities for the mail; F.5 Custom rules concerning urgent matters; F.6 Reimbursement and relief from entrance duties; F.7 Coastal traffic (cabotage); G.1 Information provided by custom officials; G.2 Relations between custom officials and the involved public; H.1 Legal proceedings relating to tariff matters; H.2 Customs violations; J.1 The use of computers.

The integration of the GDR into the world economy by its participation in the international division of labor also requires the adoption of the legal rules which decisively affect world trade and this, in turn, requires basic internal reforms. The establishment of a united German state as well as the expected integration into the EC both encourage such a course. Consequently, a revision of the commercial and foreign trade laws is urgently needed since it is a basic prerequisite for such a course.

All future steps in this area, even if the overall dynamics of events do not permit immediate participation in the corresponding international instruments, must use their multilateral rules as guidelines. That relates to the General Agreement on Tariffs and Trade as well as to tariff policy that is so intimately tied to it; after all, the previous system of taxing foreign trade must be completely replaced by a new, basically different system, a system which does justice to the requirements of a market economy.

Footnotes

1. See H.-J. Mueller, "What Did the Tokyo Round Accomplish?" in DDR-AUSSENWIRTSCHAFT No 9, 1981, 21, 51; "The Law and Foreign Trade" Supplement p 7ff.

2. See Analytical Index, 3rd Rev., GATT, Geneva 1970, p 187f.

3. See H.-J. Mueller, "GATT, Rechtssystem nach der Tokyo Runde" [GATT, Legal Position After the Tokyo Round], Berlin 1986, p 209ff.
4. See EC Gazette No L 198/3 of 20 July 1987.
5. See "BGBl" [Bundesgesetzblatt (Federal Law Gazette)], 1952 II p 1.
6. See "Introducing the International Convention on the Harmonized Commodity Description and Coding System," CCC Brussels, 1987.
7. See G.E. Michaelis, "The Special Tariff Procedures and Their Economic Basis—a Survey" ZEITSCHRIFT FUER ZOELLE UND VERBRAUCHSSTEUERN [Journal for Tariffs and Consumption Taxes], 1981, No 12 p 354ff.
8. For its effect on the economy see R. Lohse, M. Kruse and K. Triebe, "Zoelle, Einfuhrnebenabgaben und Aus-senhandel" [Tariffs, Supplemental Import Duties, and Foreign Trade], Berlin 1967, p 73 ff.
9. See Protocol on provisional application..., loc. cit. 10. See BGBl, 1952, II p 19.
11. See Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, GATT Basic Instruments and Selected Documents, Geneva 1980, 26th Supplement, p 116ff.
12. See Section 3, Paragraph 1 of the directive concerning the assessment of fees for granting licenses for the export and import of items in tourist border traffic; Licensing Fee Directive of 12 December 1968, GBl [Gazette], II No 132, p 1,063.
13. See Section 7, Paragraph 1 of the 20th Executory Provision to the Tariff Law, "Procedures for the Import and Export of Objects in Gift and Small Packages Sent Through the Mail" of 14 June 1943, GBl. I, No 28, p 271 in the form of the 29th Executory Provision of 19 September 1977, GBl. I, No 29, p 335 as well as the 32nd Executory Provision of 29 November 1983, GBl. I, No 34, p 331.
14. See GATT Doc. VAL/W/5 and Add. 1-7 as well as L/5240, Annex.
15. See "The European Free Trade Association," Geneva 1980, p 53ff.
16. See EC Gazette, No L 100/2 of 21 April 1975.

HUNGARY

Inflation, Price Changes in 1990 Analyzed

25000705 Budapest FIGYELO in Hungarian 19 Apr 90
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[Article by National Price Office Chairman Ferenc Vissi:
"In the Footsteps of Inflation: Will There Be Months of
Peace?"—first paragraph is FIGYELO introduction]

[Text] Any prevailing government must attempt to assess the likely movement of prices, because price movements also provide a background and, in part, foundations for the implementation of anti-inflationary policies. In this article the chairman of the National Price Office tries to find an answer to the question of what took place during the initial months of 1990 insofar as prices are concerned.

Governmental action regarding prices was significant last year and early this year. These measures involved the same group of products: energy resources, food products, and infrastructural services. Increases in producer and consumer prices "scheduled" or expected for the entire year took place early in the year. In both years the chief motivating factor for price increases brought about by the central government early in the year was the reduction of subsidies and the increase in taxes to improve the budgetary balance, and each of these factors caused price increases in more or less the same proportions in both years. In both years the forint was devalued in early spring. The general reason for devaluation was to stimulate exports and to make imports more expensive, i.e. the improvement of the balance of payments. Finally, in the early part of both years monetary restrictions were introduced so that the tightening of the money supply would help control inflation.

Based on all this, the government expected to see that overall the inflationary processes would slow down during the year, and that in the second through fourth quarters the inflation rate would be no higher than one percent per month.

Conditions That Did Not Exist Last Year

Now that we have reviewed the similarities, let us take a look at the differences between the inflationary processes in the early parts of both years. Due to the significant forint devaluation in late 1989, the beginning of 1990 was already subject to pressure which caused general price increases. This year the price increases introduced by the central government early in the year were greater than they were in 1989. This, in and of itself, resulted in a higher rate of inflation this year than last year. In 1990 unusually large price changes took place with respect to a greater array of products, and such changes may be found not only in regard to price increases implemented by the central government, such as in regard to water fees. They also appeared in inter-enterprise relations. Newly reorganized, mixed ownership enterprises often "open" with a large-scale domestic price increase. While during the first quarter of 1989 the "awakening" of the enterprise field took place basically after the first quarter, the same could not be said about this year. The prices of a large part of the products not subject to price controls have increased during the first quarter, and the rate of that increase is by far greater than what characterized the situation following last year's "awakening." The tightening of the market subject to settlement in rubles and the related uncertainty were important motives in this year's endeavors to increase prices. Even

the enterprises which struggle with reduced markets conserved: Material and parts inventories increased significantly while procurement did not decline despite increasing prices.

Based on these differences we may conclude that the "inflationary cycle" is becoming shorter in the enterprise sphere as a result of the acceleration of inflation. This is because the higher the average inflation rate the less it will be possible for an enterprise to prolong a price increase, or to attempt to keep in step with others with a price increase that is substantially smaller than the average price increase.

Peculiar Features in Individual Trades

Starting at the beginning of this year, the unrestricted importation from the West of a significant part of base materials—iron and aluminum foundry products, wood materials—became possible. Paralleling this measure, the previously mandatory pricing practice of conforming to external market prices has ceased to exist. But the alternative supply created by freed imports was not accompanied by the stabilization or reduction of domestic prices, even in fields where price reductions took place in the external market in late 1989, e.g. aluminum. Moreover, in regard to base materials a general domestic price increase took place early in the year. There are two main reasons for this. One is that in December the forint was devalued by 10 percent vis-a-vis convertible currencies. The other is that with respect to this group of products prices expressed in forints are still lower than what could be obtained through freed imports, the cost of the alternative supply counted in forints. The prices of certain base materials and intermediate products, such as caustic soda and phosphorus, showed a particularly large increase this year. This was caused partly by the fact that domestic prices were raised near the levels of Western market prices at this time. This took place in part with the assessment of a significant amount of differential sales tax, while on the other hand, based on agreements with certain socialist countries part of the trade will be accounted for in convertible currencies this year, and this necessarily increases domestic price levels.

The inflationary effects of the devaluation of the forint are extremely complex. For example, between 1 February 1989 and 1 February 1990 the average devaluation of the forint amounted to 21 percent, but the Belgian, French, West German, Austrian, and Italian currencies counted in forints became more expensive by between 28 and 30 percent. In given cases, the domestic prices of imported items are also determined by this rate of price increase.

Beginning in February in particular, the producer and retail prices of consumer goods not subject to price controls increased continuously and to a significant degree. The prices of virtually all durable consumer goods increased on the average by between 10 and 20 percent, building materials prices increased between six

and 20 percent, and the price of laundry products increased by 20 percent. The price increase that occurred during the first quarter in the garment industry is still below the average, but it is larger than expected. Most price increases relative to high fashion goods will take place beginning in the second quarter, like last year.

Food and specialty product prices increased substantially in January. The simultaneous price increase of products, irrespective of whether they are, or are not subject to price controls was motivated by several factors. On the one hand, everyone was affected by the significant increase of energy and transportation costs independent of the price form [controlled or uncontrolled price], while a significant reduction in agricultural subsidies took place at the same time and sales taxes on specialty goods were increased. Within this group of products, price increases that took place early this year generally exceeded the price increases expected on the basis of increased costs. In this regard shortage gained expression, such as in the case of cooking oil and margarine, while in other cases the commercial sector increased consumer prices by a far greater extent than the increase agreed upon by industrial and commercial enterprises. This process began two years ago, when the commercial sector began to continuously increase its price margin. Consumption decreased substantially in response to high price levels, and price concessions appeared increasingly. Nevertheless the effect of this is negligible insofar as reduced inflation is concerned.

Price Increase in Response to Word About Price Freeze

Early this year at the Price Office we counted on a few "months of calm" to follow the outstanding [growth of] inflation in January. This expectation was consistent with last year's experience. We sensed that this year opportunities also exist for the inflation rate to be similar to that of last year. Unexpected phenomena made their effects felt in the first quarter, however. We anticipated a smaller price increase than the actual one, relative to the group of products whose prices are not controlled. At this time we have official price data for January and February, but we estimate that the trend that evolved during that two-month period did not change in March either.

The introduction of a price freeze was suggested by some in the course of the election campaign and in parliamentary battles. It appeared that the introduction of some form of a price freeze would have broadly based political and social support, but later the parties abandoned the proposal. In any event, all of this provided sufficient impetus for quite a few enterprises "just to make sure" and raise their prices, because they know that the legality of price increases could not be challenged, and that the government will not prohibit price increases in regard to products whose prices are not controlled, and whose import prices are substantially higher than domestic prices. Based on consultations with enterprise managers I feel that making the price freeze a part of the political

struggle served only to increase inflation, because that was accomplished in the absence of any professional analysis and explanation.

Inflation is also fed by the overdue settlement of accounts among enterprises, because as long as customers do not pay, it makes almost no difference whether they are not paying for goods purchased at unchanged prices, or at prices that are 10, 20, or 30 percent higher. I do not have sufficient reliable information as to the amount of time by which the extent of overdue accounts or the acceleration of the size of overdue accounts exerts a delayed effect to increase inflation, but I am certain that the phenomenon of overdue accounts is one of the chief sources of inflation.

The relationship between interest [rates] and inflation is virtually a constant subject of debate. A significant number of new enterprises obtain part of the needed operating capital on credit, and the ripple effects of such credit, as well as the ever increasing interest payments, force new enterprises from the outset to figure as part of their prices the cost of repaying the borrowed funds. In certain instances this causes a particularly large price increase, and we may count on the manifestation of supplemental inflationary effects consistent with the growing number of new enterprises. At the same time, this kind of supplemental inflation is fundamentally different from the one related to overdue accounts, because in this case we are dealing with the inflationary effects of a broadening market economy under the Hungarian circumstances, a matter that must not be prevented. Sooner or later, there will emerge within this process some so-called market organizing prices, and the inflationary pressure may be reduced as a result of establishing commercial capital.

In recent months the heads of several producer enterprises have stated that they lowered their prices in the interest of retaining the market or in order to increase demand, but the commercial sector did not abide by this pricing policy. Virtually without exception, these producer enterprises asked the Price Office to exert pressure and to enforce price reductions in the commercial sector. At first glance it appeared that the heads of producer enterprises were correct, because reduced prices seemed to present a chance for moderating consumer price levels. Nevertheless, we did not comply with this request. Not only because we did not have the legal means to do so, but also because this kind of activity would conflict with market economy standards. What is at issue is the fact that products must have a relatively independent market at each place where it is possible to sell such products. The market may be regarded as balanced if within each individual vertical integration, more or less balanced supply and demand conditions evolve everywhere. It is no coincidence that competition laws in developed countries prohibit the setting of retail prices. It is yet another matter that in the long term—hopefully paralleling the privatization of commerce—the merchant may also develop an interest both in retaining long-term relations with given producers, and in

achieving an identical growth of the [acquired] market share. We are aware that this is not yet the case today, but the functioning of our system thus far has proven that this kind of mutual interest cannot be replaced by directives issued by the government.

Expectations

From the standpoint of inflationary expectations, there are far more uncertainties than there are factors which may be predicted with certainty. Making estimates under such circumstances is particularly dangerous. It is no coincidence that a majority of such predictions use the "if ... then" approach regarding every factor of inflation. Space limitations established for this article do not permit the listing of these, therefore the following may be regarded only as conclusions reached on the basis of certain assumptions.

During the first quarter [of 1990] an inflation rate of between 12 and 13 percent evolved. This is higher than the nine- to 10-percent inflation rate recorded during the same period last year. A 12-percent inflation rate is high, yet this is not of the greatest importance. Of greatest importance is the question of whether inflation continues to gain strength or if it declines after the inflationary wave of the beginning of the year subsides. In recent years price increases have slowed down substantially after price increases have taken place early on, i.e. only seldom have there been new inflationary waves. And we were well aware in advance of the causes of such rare, additional inflationary waves: e.g. devaluation. Monthly average price increases during such periods of calm have clearly increased in recent years. While between 1987 and 1988 the monthly average price increase regarding products whose prices were not subject to controls amounted to one half of one percent, this year it is likely that such increase will amount to more than one percent. (In terms of specific price increases a one-percent-per-month inflation rate manifests itself in price changes of only five percent of the goods sold, but in regard to those the price increase amounts to between 15 and 20 percent.)

Whether the period during which the inflation will increase by one percent per month will also constitute a period of calm depends on several factors. Above all, it depends upon whether the new government will succeed in spreading and proving the general belief that future stability is possible. It depends on whether the new government will be forced early on to present another "package to improve the budgetary balance," and together with that some additional inflation. Further, it depends on the extent to which financial discipline is restored in enterprise relations, and on the length of time in which enterprises or branches of the economy struggling with significant structural crises burden our lives with inflationary tensions. In regard to free market food prices, the volume of the crop represents an important factor, and this is uncertain, of course. The way prices take shape in the external market favors the advent of a period of calm.

Inflation represents an extraordinary threat amid the present political and economic situation, but taken as a whole, inflation is not yet out of hand. All the problems presented this year may still render this year as a "year of calm," despite the accelerated inflation. Managing the inflationary process, however, also presumes an extremely streamlined policy from

the professional standpoint. The experience gained in countries which have lived through high inflation, and have coexisted with such inflation for a longer period of time, proves that one can arrive at a 50- and 100-percent inflation rate extremely fast from a 20- to 25-percent inflation rate. Avoiding this is a societal, a national interest.

Significant Central Government Producer and Consumer Price Measures Implemented in Early 1990

	1990 Price Increase	
	Rate of Increase in Percent	Date Introduced
Producer Prices		
Coal for power plants	25	8 Jan
Coke	10	8 Jan
Heating oil	10-23	8 Jan
Natural gas	25	8 Jan
Electrical energy	19	8 Jan
Public works drinking water and sewage services	16	8 Jan
Railroad freight	30	8 Jan
Piece goods transportation	15	8 Jan
Consumer Prices		
Milk	43	8 Jan
White bread	23	8 Jan
Hard rolls, salt sticks	31	8 Jan
Personal vehicles	25	8 Jan
Gasoline	13.6	8 Jan
Motor oil	30.8	8 Jan
Water, sewage (in privately owned housing)	336	8 Jan
Housing rental + water and sewage fees	(35 + 35)	1 Feb
Postal services	22	8 Jan
Telephone	11	1 Feb
TV subscription	30	1 Feb
Local transportation	45	1 Feb
Railroad and public road personal transportation	20	1 Feb

First Quarter 1990 Price Increases of a Few Significant Products Not Subject to Price Control

	Price Increase	
	Rate of Increase in Percent	Characteristic Date of Occurrence
Base Materials		
Aluminum, semifinished products	12	1 Jan
Iron foundry products	12	1 Mar
Wood materials	20	1 Jan
Inorganic base materials	15	1 Jan
Organic base materials	15	1 Jan
Consumable Industrial Goods		
Durable consumer goods		
Vacuum cleaners	9	1 Feb

First Quarter 1990 Price Increases of a Few Significant Products Not Subject to Price Control (Continued)

	Price Increase	
	Rate of Increase in Percent	Characteristic Date of Occurrence
Color TV (Orion)	11-13	5 Feb
B&W TV (Orion)	10	5 Feb
Hot water heater (HIM)	18	1Mar
Dryer (HIM)	15	1Mar
Automatic washing machine (HIM)	10	1Mar
Select dial washing machine (HIM)	15	1Mar
Refrigerator and freezer (Lehel)	12	1Mar
Building materials		
Reinforced concrete products	9	1 Feb
Stone gravel	6	1 Feb
Insulating materials	13	15 Feb
Brick and tile	20	1Mar
Carpentry industrial products	10-15	1Mar
Cement	16	26Mar
Food and Specialty Items		
Food		
Meat, meat products	32	8 Jan
Shortening (except cooking oil and margarine)	32	8 Jan
Flour	22	8 Jan
Rice	16	8 Jan
Dairy products*	43	8 Jan
Bakery products*	26	8 Jan
Cooking oil	35	12 Feb
Margarine	36	12 Feb
Confectionary products	34	29 Jan
Specialty items		
Beer	23	8 Jan
Spirits	20	8 Jan
Tobacco	25	8 Jan
Soft drinks**	12	
Coffee***	5	
Tea	22	12Mar

* Exclusive of items subject to official prices

** Continually, throughout the quarter

*** Only at certain commercial enterprises

POLAND

Foreign Investment: Steps To Foster Current Interest

90EP0143A Warsaw TYGODNIK SOLIDARNOSC
in Polish No 8, 23 Feb 90 pp 4-5

[Article by Wojciech Gielzynski: "Willing, Until They See"]

[Text] One could write a volume of satires about the tales of businessmen who left Poland with disgust because they could not reach anyone by telephone.

And another volume could be written about the tales of our banks which recoil from handling money transactions and about the post office which functions less efficiently than in the stagecoach days.

And the third volume could describe the experiences of businessmen with customs officials, cab drivers, waiters, porters, foreign currency blackmarketeers, and hotel "ladies of the evening"; this volume would be very spicy.

Without in the least ignoring those vicissitudes which put Poland, from the standpoint of modernity, among the Burkina Faso states (although a level above Laos), we should also say something about the deeper reasons for the listlessness of the sharks from Wall Street in their romance with the Vistula's mermaid [refers to the emblem of the city of Warsaw, which portrays a mermaid].

Veni, Vidi, Vici—Or Our Man at the Capitol

For many decades the hearts of the Americans were divided; one half tended to make things difficult for Russia by supporting Polish irredentism, the other half tended to avoid destabilizing Eastern Europe because this might complicate the strategic contest with the USSR. In any case, few people expected that "Moscow will permit" the political independence changes taking place in the satellite countries, so why enter onto miry soil?

The first signal that something is really changing in the East was the roundtable.

The second was the elections victory of Solidarity.

The third was the formation of the Tadeusz Mazowiecki government.

But these were the preliminaries. The finale was Lech Walesa's visit which was given an unheard-of standing, particularly his triumphant speech before the joint meeting of both houses of Congress.

No Pole in history, including Paderewski, evoked such enthusiasm in America. In the most important and most dignified parliament of the world emotions rarely determine decisions, but this time they did.

The debates on the package of assistance to Poland, which had been dragging on for a long time, were

immediately brought to an end after Walesa's visit, despite the fact that a quick success had not been predicted because the congressmen estimated that Poland's chances of overcoming the crisis and the ability of Mazowiecki's government to implement the announced program were small. Walesa produced a miracle because he showed himself to be the embodiment of the American myth of a self-made man, a man who created himself. Congress passed a bill granting even more help than had been proposed by the White House (which also won a victory because just like the AFL-CIO union headquarters, it proved that it was right in its policy of supporting Solidarity).

But before even one dollar from the American treasury reaches us it must traverse a long and prickly path. The American bureaucracy is efficient, but not speedy; we know what the Polish bureaucracy is. Neither side was prepared for such large deals, because until now they dealt in much smaller ones.

True, there was some movement, because help for Poland also means business for many American firms. Farmland Dairies and United Refrigerator became interested in a joint venture with the foodstuffs industry, Lockheed Air Terminal with the aviation branch, AMOCO and Combustion Engineering with the petrochemical industry; they were followed by Belart, FMC, Oppenheim, and Ingersoll Rand. Proposals for additional investment credits were made by Bear Stearns, Wright Investor's Service, the huge Paine Webber Assets (14 billion in capital), Smith Barney and a group of Jewish financiers. They want to invest in the construction of housing, hospitals and sanatoriums, in insurance, in the modernization of the State Railroads, in refrigeration, and they even want to finance installment sales for people and purchase stock in privatized enterprises.

A wave of large capital moved toward Poland.

And immediately stumbled on the threshold.

A Guest in the House Means Trouble for the Host

The businessmen, those longed-for sharks, felt that friendly Poland, which welcomed them with an open heart, came from another planet. Already at the arrivals hall at Okecie Airport the airport waiting room reminded them of the old Chattanooga-Choo-Choo song, which put the older arrivals in a lyrical mood but drove the younger ones crazy when they saw their costly bags heaped into a formless pile. Then there wasn't enough place for everyone in the automobiles and in the Holiday Inn, which represents the height of luxury only to the natives. They endured this with good humor, glad that from all sides came the familiar words "welcome" and "change money?" But they lost their good humor when their absent-minded hosts could not direct them to any specific partners with whom they could do business but said that there are temporary organizational difficulties.

The deeper they entered this Polish forest, the more confused they became. In the trade offices, whose names

had the English prefixes "ex" and "imp", they were not handed stacks of brochures but some kind of badly reproduced information sheets—printed in Polish. The consulting firms they saw were not in the form of computerized offices, but some suspicious-looking characters demanding enormous sums to act as brokers, even before there was anything to broker. Some ministry officials even knew how to speak English quite correctly, but they were not able to say anything that made sense about market and legal terms (especially about terms for transfer of profits), because the laws were "being prepared," or there were still no executive regulations for the laws. When, step by step, the sharks finally reached potential commercial partners, these partners turned out to be extremely reluctant, complaining about the uncertainty of the political situation, the high rate of inflation—which made it impossible to calculate, the lack of raw and other materials, semifinished products and processing capacity, and other innumerable obstacles. Furthermore, some intimated that a gift might be welcome or simply demanded baksheesh in return for their consent to take credits.

When this gloomy news reached Washington, the administration did not become unnerved but (mindful that Congress had fallen in love with Walesa) sent a "presidential mission" to Poland, which was supposed to determine whether the "package of assistance" had been put together correctly, how it should be put into practice, and whether big business should look for anything at all in Warsaw. The mission met with deputy premier Balcerowicz and got the best possible impression; but only then, after this talk, did the full impact of the depth of the Polish decline reach the consciousness of the Americans.

They returned to America "slightly disappointed" because they got the impression that Poland has too small an administrative apparatus and will not be able to process the assistance from the West. The Polish stagnation is too shallow for the sharks to swim freely in it. We must wait, they said, for the economy to become stable, and especially the money. The report submitted to the president was skeptical: not investment, not credits were emphasized, but the need to educate the Poles. These opinions were widespread, because the large financial institutions such as Lazard Freres and Manufacturers Hanover Trust, expressed identical views regarding Polish businessmen. But not all were so narrowminded; Drexel Burnham still intends to finance (for a sum of \$900 million) the Poludnie petrochemical complex.

Others are more cautious. They explain that commitment in Poland—a "high-risk country" which is in the last ranking percentile of the list of reliable clients—would weaken the confidence of the persons and organizations whose money has been entrusted to them... To invest in Poland is like throwing money into a "black hole."

The Press Is More Skeptical

The "big Western press" is still friendly towards Poland, but it is also more restrained, particularly the professional journals which count the most on Wall St.

THE JOURNAL OF COMMERCE (26 Jan 90): After heavy losses in South America the banking community will not throw money into Eastern Europe—reported Michael Stocks from Midland Bank and this—added Robert Scallan from Barclays Bank—despite the enthusiasm with which the changes taking place there have been received. Banks do not like to do business with organizations which do not have a system of calculating interest on credits, or profit-and-loss statements, or personnel with international experience. But the JOURNAL also says that money can be earned and that Poland can be modernized by buying processed food from it if the Poles improve its present quality, which is "unacceptable to the West." As a positive example, it cites Eastman Kodak, which although it sees no chances of making money in Poland through a network of film-processing centers, nevertheless furnished us refrigeration equipment for the export of fruits and vegetables which would otherwise have rotted.

THE INDEPENDENT (28 Jan 90): The actions of the Poles are correct, but they are very risky. The analytical base of their program is weak.

WASHINGTON POST (26 Jan 90): It is better not to rush with assistance for Poland until it is clear as to how economic reform is going.

LE MONDE (17 Jan 90): The government is meeting with passiveness on the part of the administration.

WOCHENPRESSE, in an opinion on a talk with Walesa: It is generally believed abroad that after a great shock the Polish reforms have come to a standstill.

EL INDEPENDIENTE (22 Jan 90): Poles born and raised in a socialist economy, not afraid of losing their jobs in a low, although secure, standard of living, do not want to be less poor today at the price of more work and lack of a secure tomorrow, which the previous regime gave them.

NEWSWEEK (15 Dec 89): Six months after the economic chaos a political crisis will occur.

World-renown experts, to whom the Western press often turns for an opinion, also express themselves dolefully.

K. Yetter, US secretary of agriculture: Poland will not be able to attract foreign investment if it does not build the necessary infrastructure (banks, telecommunications, services, etc.

M. Boskin, advisor to President Bush: Poland lacks the institutions indispensable for the maintenance of a free market. Most of the enterprises do not have simple accounting systems which would permit them to determine whether they are making money or losing it.

M. Allals, Nobel laureate: Beware of over-optimistic hopes for quick and positive results of a market economy and privatization.

J. Delors, chairman of an EEC commission: Money and goods flowing from the West are not enough to build a Polish economy.

N. Borlaug, Nobel laureate: Riots may take place in Poland as a result of food prices... A regression may easily occur because many people will begin to see that the old system was not that bad.

J. K. Galbraith: Expectations of quick market solutions are idiotic.

And one more quote from LA SUISSE (8 Jan 90): All Western businessmen, upon their return from the Eastern countries, will tell you that the people with whom they talked there were never able to categorically confirm anything, or even say who was competent to enter into negotiations.

Something Has To Be Done...

...but the government, even if it had time to do something besides stifle inflation, will not in one month repair an infrastructure which has been neglected for decades. Even more so, even in a year, it will not be able to restructure the economy, will not be able to put in place a modern economy capable of export and repayment of old and new credits. Poland's indebtedness will grow greatly in the next few years, and this, too, is a disincentive for investors who are looking at Poland.

Therefore, we should do at least as much as we can: cleanse the economic apparatus of the entrenched nomenclatura cliques; the "untouchable" foreign trade enterprise directors, who "overlooked" such transactions as the export of tractors without wheels to Thailand, and vehicles shipped to Pakistan by "cheap transport" (they arrived compacted into one pile); the commercial counsellors lacking the most basic qualifications, appointed (e.g., in Saigon) in order to "make a little money" before retirement. Enough toleration of persons who are incompetent, corrupt, who sabotage government policy, and who are arrogant, because, after all, "there was to be no witchhunt."

There can be no campaign against those workers who loyally (and skillfully) do what they are supposed to do, without regard to their political sympathies or affiliations; on the contrary, they, and particularly the young, who have previously been blocked from advancement, should be promoted to responsible positions. It would be worthwhile to immediately provide them with the assistance of foreign experts. That would cost a lot, but would bring more.

Haste is essential, because the pro-Polish fervor in the West is cooling. Our neighbors are offering better opportunities to the capitalists, and—which is also important—more comfortable living conditions for their personnel, free of unpleasant experiences.

Perhaps we should use an additional trump card, Minister Malgorzata Niezabitowska [government press spokesman]. She speaks English, knows America well, and is perfect in the propaganda of success. It will be easier for her to convince the trusting Americans than us—they will buy it—that in Poland all is going well, that Balcerowicz's program has really already succeeded, the market has been quieted, the zloty has become hard, and everything is OK!

Office of Central Planning Director on Goals, Intervention Policy

90EP0477C Warsaw ZYCIE WARSZAWY in Polish
19 Feb 90 pp 1, 3

[Interview with Jerzy Osiatynski, Minister, Director of Office of Central Planning, by Andrzej Zmuda; place and date not given: "Is the Recession Already Excessive?"]

[Text] [Zmuda] Our readers have not yet had an occasion to learn much about the activities of the CUP [Office of Central Planning], and recently this acronym has been linked to regular 10-day assessments of the economic situation. Admittedly, the CUP's assessments are objective but not very encouraging and moreover they are quite detailed. Is it that you are resuming the tradition of the former Planning Commission which used to be concerned with every little trivium and simply acted like a super-ministry of the economy?

[Osiatynski] We most certainly are not returning to any such tradition, and for the sake of fairness let me say that the development of new model of a central planning agency relieved of the burden of detailed management and now acting as a kind of programming, analyzing, and advisory headquarters had been commenced by my predecessors.

I think that the headquarters-like nature of the CUP does not at all preclude an attentive and even detailed monitoring of the current economic situation. Thus we signalize its weak and strong points, and on the other hand we are accomplishing our principal purpose, that is, preparing economic forecasts and short- and long-range assumptions and variants of the country's economic policy. Such activities are indispensable to any country, including countries distinguished by their developed market economies, and we need them all the more now that we exist in a stage in which market mechanisms are still not operating too well.

Among interim forecasts and programs let me mention, e.g., a program for individually addressed food aid, or emergency programs in the event of a severe winter. We

also are doing research into the application of various instruments whereby the State can influence a market economy.

[Zmuda] In view of this, Mr. Minister, you do not preclude State intervention into the economy, and specifically with respect to planning, do you? For sometimes the impression arises that the implementation of the Balcerowicz [inflation-stopping] Plan consists chiefly in "market self-regulation," with the State remaining an aloof observer.

As if the State had no regulatory function? What about, for example, the entire financial, credit, and tax system? We no longer have the so-called Central Annual Plans, which chiefly specified quantitative production indicators, etc., and therefore, as known, usually failed. But as for economic analyses and the drafting of forecasts and development plans, that is being done throughout the world, both in highly developed countries and in the developing countries that follow precisely the model of the market economy. Elements of state intervention into the economy are present in both France and Holland as well as in Japan and South Korea, for example, the Japanese MITI, which includes national planning agencies, employs more than 10,000 people.

Thus let me once more emphasize that it is untrue that we are abandoning state intervention into economic processes. There exist domains, such as the entire infrastructure of this country, which the market on its own will not deal with. This also applies to, e.g., regional planning and regional policies. Here, problems will not be settled by measures taken by individual ministries of state; what is needed is a coherent national policy coordinating, e.g., the process of equalizing the socioeconomic levels of individual regions of this country.

That is why a government agency like the CUP is greatly needed. But on the other hand planning should not be identified with direct administrative intervention into economic processes.

[Zmuda] Have the operating guidelines of the CUP, and in general of planning of the national scale, been defined yet?

[Osiatynski] The currently drafted law regulating the scope and instruments of the state's influence on economic processes—replacing the existing law on planning—will regulate all this and define, among other things, our purposes and powers of coordinating growth and investment decisions, etc., on the scale of the nation as an entirety. We are only beginning to learn macroeconomic policies under our new system of society. We should involve research centers, academia, and ministries in this work.

[Zmuda] Are not the current economic difficulties distracting the CUP from long-range projects?

[Osiatynski] At present we in Poland are undergoing a genuine revolution; everything is happening and

changing very rapidly. This always contracts the horizon. Currently the principal task is to try and master the elemental danger of inflation, to stabilize the economy while at the same time initiating structural changes along with changes in modes of ownership as well as along with the abolition of monopolies. But the entire process of marketizing the economy, changing the structure of ownership, and promoting internal and external competition is a longrange task. Promoting the growth of entrepreneurialism and private initiative, and the formation of joint-stock companies and authentic cooperatives is a long, arduous, and often painful process. But at the same time it is affording fantastic opportunities, especially for young people.

[Zmuda] That is in the future and, according to you, Mr. Minister, in many fields it is not bound to happen for some years yet. But now it is mid-February 1990 and six weeks have passed since the Balcerowicz Plan was put into operation and, according to CUP reports alone—the figures with which we commenced our interview—some of the assumptions of this plan are being (unfortunately!) overfulfilled: I refer to the greater-than-assumed price rises, decline in output, decline in real incomes, etc. The press abounds in reports on not only price movements but also stagnation or even drastic decline in manufacturing, the closing of artisan workshops.... Are we then at the threshold, or rather at an explicit beginning, of a menacing recession?

[Osiatynski] The CUP at present is focusing on a detailed analysis of the first major coup to balance the economy, a coup that is an important element of the IMF [International Monetary Fund] adjustment program. The CUP has been involved in operational monitoring of the implementation of that program ever since the beginning of this year. Our reports are regularly analyzed by the Economic Committee of the Council of Ministers and by the Ministry of Finance. The CUP maintains a special taskforce for polling enterprises and banks and collating the findings once every 10 days. It also is monitoring price movements and the level of output in discrete subsectors, nearly daily at that.

Thus it is not as if we knew nothing and were not responding to anything. As known, there were four interventions by the State in January: the tax on miners' wages was revised, subsidies for fertilizer production were introduced, the loan interest rate was lowered, and bread price controls were imposed. We are aware that in certain branches of production such as food processing the output has markedly declined owing to the stalled demand. We are deeply disturbed because the indicator of price increases is much higher than had been assumed. It may be that something was overlooked or not foreseen in the part of the adjustment program relating to prices and incomes. Indeed, it is disturbing that output has declined steeply.

But we must stay cool in face of all this, avoid hasty generalizations, because economic policy may not vacillate.

As for the recession, I hardly need to assure you that it is not the government's intention to bring about an economic collapse and a drastic decline in the GNP. If it turns out that the stagnation of production is perilous and in practice the economic program threatens a sudden collapse of the economy, we shall counteract this. At the next session of the "information center" of the Economic Committee of the Council of Ministers we shall consider this issue, including the problem of the scale of the recession and, if the need arises, propose suitable measures to the government.

[Zmuda] Mr. Minister, in your opinion, do not we in fact have a recession, in not only manufacturing but also services?

[Osiatynski] I personally fear that even now it is already too deep. I believe that this also is worrying the principal author of the economic program, Deputy Premier Leszek Balcerowicz. Unfortunately, so far, enterprises have not undertaken the adjustments expected of them. This may be a matter of time.

[Zmuda] But Deputy Premier Balcerowicz is known for his intransigence and firm adherence to once-chosen course, and he is not going to turn rapidly the helm by even a few degrees.

[Osiatynski] This intransigence may yet prove to be our opportunity. And besides of a certainty he is not a dogmatic economist. Ultimately in economic practice much is a question of knowledge but much also is a question of having a "nose," of intuition or art. What matters most is that we should not panic each other.

[Zmuda] Thank you for the conversation.

Craft Industries Faltering, Economic Future Uncertain

90EP0477B Warsaw TRYBUNA in Polish
20 Feb 90 p 3

[Article by Irena Szaczkus: "The Death of Craft Industries?"]

[Text] The craftsmen who had exhibited their goods at a recent Warsaw fair are likely to recover only one-fifth of their expenses. Thus, many of them are taking the desperate decision to close their establishments or suspend production. Others are laying off their employees. Others still are desperately seeking foreign contacts.

An acquaintance of mine who produces ballpoint pens has decided to close her workshop for February. This decision was also taken by 288 other small producers in Warsaw during the first half of February, while as many as 236 others decided that they could best solve their problems by shutting down their establishments permanently.

According to the Katowice office of the State Treasury, 91 artisans' establishments were shut down in that city since the beginning of the year. In other localities the situation is similar.

Statistics kept by Treasury offices and voivodship departments of industry and commerce also indicate, however, that more craftsmen's establishments are being formed than have been closed, since the beginning of the year. But let us not succumb to the magic of numbers. More than once, those new establishments exist on paper only: they have been registered and there are good intentions and some capital, but workshop premises and tools are still lacking. Such statistics obscure the situation of the craft industries.

The Vice Chairman of the Warsaw Chamber of Crafts and Trades Marek Butrym, regrets most the establishments which had started operating many years ago: their proprietors are not taking hasty decisions to shut down permanently but rather taking a "furlough": they are waiting for the prices of raw materials to stabilize and the credit outlook to improve. They also are waiting to sell previous shipments at "old" prices. But what will their future fate be? Whoever is not flexible, is doomed.

The principal customer of many products made by craftsmen is, dutifully as it were, the retail outlets of the "Crafts Department Stores" Company. That company also is living through difficult times. According to Director Antoni Werner, at present it is closing its branches (and retail outlets) in, among other places, Szydlowiec, Wegrow, Warka, Radom, and Grodzisk Mazowiecki. The cost of transportation at present is too high in relation to volume of sales. Craftsmen's products do not sell, because people are chiefly focusing on buying staple foodstuffs. The situation is particularly acute as regards sales of furniture, clothing, and souvenirs.

Ursus Tractors: Incentives Offered To Attract Buyers

90EP0477A Warsaw RZECZPOSPOLITA in Polish
17-18 Feb 90 p 2

[Article by Edmund Szot: "Ursus Is Looking for Buyers: Tractor Prices Decline"]

[Text] During January and the first half of February the Ursus Machinery Works produced about 6,000 tractors. During that period more than 4,000 tractors could be sold in this country and about 600 abroad.

This information was provided on 16 February at a press conference in Ursus Works. It is worth noting that as late as last year there were seven buyers waiting for every tractor built there, and the demand for that year was estimated at 95,000. However, until January 1990 Ursus products had been highly subsidized and their purchases, as seen today, partially irrational.

The exclusion of tractors from the group of officially priced goods and the elimination of the so-called price

ceilings enabled the producer to raise the price to a level assuring at least minimum profits. But then there arose the so-called demand barrier as demonstrated by, among other things, the impossibility of selling all the bonds issued late last year. The stagnation in sales was also caused by the habituation to the previously binding command-allocation system and the greed of the trade middlemen who added a surcharge of sometimes even more than 20 percent to the tractor prices. The evident decline in demand was also caused by the high loan interest rates.

To revive the sales of their products the Ursus Tractor Industry Association is introducing the following buyer incentives:

- regardless of the date on which the tractor is received, its price will be the same as on the day the bond had been bought [Ursus bondholders have priority in buying Ursus tractors];
- a 10-percent price discount is available in February;
- the Ursus Machinery Works provides (until the end of the first quarter of this year) a 2-year warranty for the MF-series tractors it produces under a license;
- the heavy tractors not covered by the bonds will be sold according to marketing prices by the Ursus Machinery Works.

Export Policy Doubts, Ruble/Dollar Trade Discussed

90EP0476A Warsaw POLITYKA-EKSPORT-IMPORT
in Polish No 4 (11), 17 Mar 90 pp 7, 8

[Article by Tomasz Berg: "Keeping Head Above Water"]

[Text] The dubious charm of the Polish economy lies in the fact that, among other things, it has become quite unpredictable. Therefore, it is not surprising that Deputy Premier Balcerowicz and his people, in presenting the program of changes in December, tried as hard as they could to avoid making predictions or citing figures. But, after all, the nation had to be told something at the beginning of the program, and now, when we return to last year's expectations, it appears that reality has upset the calculations—including those pertaining to foreign trade.

On the eve of the new year many professional economists were of the opinion that during the first few months Polish exports would clearly grow. For the exporters, the new dollar exchange rate seemed to be encouraging; however, demand in the country dropped from week to week. It would have been expected that the producers, seeing what was happening, would rush abroad with their goods.

Yet all of this logic failed. In January, Polish exports dropped 16.1 percent compared with the same month a year ago. Dollar sales, i.e., those which are truly significant, shrunk as much as 20.2 percent. Exports to socialist

countries were also poor, dropping 11.3 percent. When the January figures are compared with December figures, they yield even worse results. Polish export declined 70 percent (although a similar phenomenon appears every year). To put it briefly, the producers did not hoard any goods and everything ostensibly went on as before. And it would be well to know—why?

With a little further digging it turns out that there are many reasons for this. First, anticipating a change in the exchange rate of the dollar, the exporters executed a clever maneuver which consisted of withholding payment but not withholding shipment of goods. When the flow of export and import is compared, it turns out that in January the favorable balance in foreign trade amounted to only \$13.4 million and was four times lower than in the same period the previous year. In reality, much greater amounts of "delayed" money flowed into Poland, and the favorable balance in foreign trade totaled \$151 million.

Three Culprits

But the January 1989 figures were \$93 million short. And that is a great deal. And here, to help, comes commodity classification, which shows that the main culprits are coal exporters (export dropped by \$16.4 million), rolled metal products (\$7 million), and copper (\$27.7 million). It is these commodities which account for 55 percent of the total drop in export. Without this trio the statistics would look much better. Of course, a large drop in export of these raw materials and semifinished products would also be worrisome, but there is nothing unnatural in this. Coal exports are controlled by quotas, a high sales tax was placed on copper (already lifted), and the producers of steel and sheetmetal produced badly and expensively. Polish foreign trade should not be based on such mainstays, and probably will not be.

There is finally a third reason not to despair after January's disastrous figures. Throughout all of the economy, this was a time of surprises and uncertainty. Deceptive movements and anticipations. It is obvious that the directors of enterprises, swamped with new regulations, taxes, changes in the laws of economics, hesitated for many days to choose a path, wanting to determine in which direction the present government is really pushing them, where the most convenient gaps in the regulations are (no regulations are completely tight), how they can save their own hides at the lowest possible cost. Now they know that they cannot count on domestic buyers. All that remains is the world, however demanding and unfriendly it may be.

That also is why, with an almost 30-percent drop in industrial production, export in February of this year rose 6.8 percent compared with the same month last year, and free foreign exchange export rose 12.3 percent. The decided majority of producers today have no illusions that selling off trucks at various locations in Warsaw, Katowice and Krakow, sometimes below costs

of manufacture, is saving them from bankruptcy, or is even ensuring them a base for a stable existence. Therefore, they are gradually turning in the direction which provides their only hope, and furthermore, without any guarantee that the struggle for survival will end happily.

Export to the Rescue

In February, export of farm commodities, ready-made clothing (all of light industry), and electrical machinery products, rose particularly sharply. Export of fuels and products from the food, metallurgical and chemical industries, deviated only slightly from last year's February "norm." The January pit began to be zealously filled up and although it was not possible to fill it completely (after 2 months the present export is 98.4 percent of last year's), the change in tendency is apparent. In free foreign exchange trade the January losses have been made up almost entirely. Soon we shall see enterprises begin to hang banners reading "whoever does not export, dies," on their gates.

Will this "march to the West" last long? We really do not know. As of 1 January, most of the abatements, supplements and preferences for exporters came to an end. The exchange rate, which was high enough yesterday and may be so even today, may soon lose its appeal. Everything depends on the rate of inflation and on how skillful the enterprises are in reducing their prime costs. At the moment, Balcerowicz's team does not appear to be inclined to consider the reasonableness of another devaluation of the zloty, which would again raise the profitability of export. For the government, the struggle with inflation is of foremost importance. And this struggle, to tell the truth, is never ending. Therefore we cannot exclude the fact that some enterprises, wanting to prolong their existence, will do exactly what they are now doing in the country: Selling products abroad below their own costs simply to gain a little cash for wages, the most urgent bills, taxes, etc. But this will rescue them only for the short term. For some, the end is already dangerously close.

It is hard today to make definite predictions, but on the whole it may be assumed that during the next one to two months Polish export should not drop, particularly since the government has increased the quotas, reduced the list of commodities subject to a turnover tax in export, and reduced certain tariffs, which should facilitate production and import of producer goods. Over the long term, everything depends on the state's exchange rate policy and the choice of priorities: Stifle inflation at all costs or strongly stimulate production? I believe that the government will be consistent and that, in either case, hard times await the exporters and they will have to rely primarily on their own resources.

They say at the Ministry for Foreign Economic Cooperation that there will be no reason for real worry until everyone begins to go down: the weak and the strongest. And it is a long way from that.

Nothing Is Free

The case with import is different. Since January, when both sides of Polish trade looked very bad, much less has changed in import. In February, our purchases abroad, compared with January purchases, grew 50 percent, but the starting point was so low that on the whole they continue to deviate from the average. After 2 months, our import is almost 13 percent lower than in this same period a year ago. The flow of goods from countries with which we settle our accounts in rubles is particularly slow, but it is not much better with the dollar imports. Actually, this is not surprising. With production so low, many producer-goods commodities are becoming unnecessary, and the enterprises do not have money for market products. The situation is made steadily worse by very expensive credit. As a result, after two months we already have a favorable foreign exchange balance in foreign trade, amounting to almost a quarter of a billion dollars, i.e., more than in this same period last year.

In designing the plan for the present balance of payments its authors envisaged a trade deficit of \$800 million at the end of the year. In doing so, they counted on the fact that this year export will drop about \$700 million and that import will grow by the same amount. We already see that only this first "task" could have been easy to accomplish. But right now, exporters are ignoring plans because they want to survive, and there is neither demand nor money for imported goods, despite the fact that price-wise they are becoming more attractive. After 2 months, therefore, there is already an unplanned surplus in trade, which was not supposed to happen. Export is somehow holding on, and this is not surprising. On the other hand, it is bad that producer-goods import is clearly dropping, because this must necessarily reflect on the amount of production in the country in the next few months.

The almost three-fold growth, after the first 2 months (compared with the same period in 1989) of dollar investment import is surprising. It seems that we are slowly beginning to utilize the money borrowed from the International Finance Corporation and the World Bank. It is possible that stock companies are also importing machines and equipment. In any case, this is some kind of promise for the future, although a very weak one right now.

Strange Trade

If we have the impression that trade for dollars is drawing close, that the rules of the game are clear, and that the process of necessary adaptation is underway, the case with ruble exchange is completely different. After years of experiments and "explanations," we have arrived at the paradoxical point where everyone is dissatisfied with this otherwise very necessary cooperation: the producers, exporters, and representatives of our government. The partners also, not always for the same reasons, have many reservations. The last of the Mohicans, playing a close game and betting against the bank,

who are happy with the present rules, are the pseudo-tourists and smugglers. But we are not talking about them here.

After 2 months, the situation is as follows: Polish export for rubles, compared with last year, is 3.5 percent lower (after January the drop was 11.3 percent). Import, unfortunately, is even worse. It is 18.7 percent lower. The greatest breakdown has occurred in the food, chemical, paper-pulp and fuels industries, but it is also bad in the remaining fields. It is harder and harder to squeeze goods out of our partners. We would like this trade to be balanced. They decided that this is how they will withdraw part of the money loaned to Poland earlier. After two months, the surplus of Polish export over import in trade with CEMA countries was almost 400 million rubles and was two-and-a-half times higher than in the same period last year. Almost 300 million rubles of this fell to the USSR. Wanting to stop the gap from widening, possibly the government will decide to make the exchange rate of the zloty to the ruble dependent on whether the transactions are covered by government agreements or not. Compulsory repayment of our debt is not in our best interests. Everyone in Poland agrees that first we must solve the economic crisis.

The motives which guide the governments of the East European countries are obvious. But why, in the face of

the extremely unfavorable exchange rate of the zloty to the ruble, are Polish producers, while complaining and vituperating, striving to export to these countries? At the state's present exchange rate policy, the total drop of 3.5 percent after 2 months indeed does seem small. Yet in February, compared with the same month last year, our export even grew.

As usual, there are several reasons for this: meager possibilities of sales in our country, inability to sell in Western countries because of lack of up-to-date and good-quality goods, the desire to adhere to long-term agreements, and above all, survival. I do not exclude the fact that desperation is forcing many producers to trade with the East European countries. No one wants to be the first to bankrupt and such trade prolongs irrational hopes.

But if we omit this particular exchange, whose rules must be changed as quickly as possible, it is apparent that Polish export, compared with other fields of the economy, is somehow holding on. After a moment of thought and uncertainty, the producers and traders began to behave rationally, but given such a deep crisis and the government's present deflationary policy, even this reasonable position does not guarantee success to everyone, or even survival.

GERMAN DEMOCRATIC REPUBLIC

Journal Views Emigration Rationale

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[Article by Lothar Fritze, diplomat in Economics: "The Emigration Phenomenon"]

[Text] Our country is rocked by an emigration wave partly legal, partly illegal. Tens of thousands have left the republic this year alone. The sudden emigrations of past months have after all created the very climate in the country in which the beginning of long overdue reforms in our society became unavoidable.

In my opinion, the emigration phenomenon deserves special attention when analyzing our present situation because it is symptomatic. It would be far too simplistic to assume that it merely expresses the downfall of a social system. To be sure, the massive rush of GDR citizens to emigrate is of course an indication of the condition of this society. But most of all, it says something of the unfulfilled desires and needs of people, their expectations and yearnings, which are connected to their leaving, as well as the hopelessness of seeing those hopes and dreams come true in their homeland within the foreseeable future.

Every attempt, however, to come up with "typical" reasons for emigration is difficult from the outset. It is especially important to be clear about the kinds of reasons one should look for. It is important to keep various things in mind. First of all, stated motives may not be the motives which are subjectively honestly felt. Often, especially when we don't know the subject very well, we are unfortunately forced to rely on what he says. And even in cases where subjectively felt motives are stated truthfully, this does not mean that they represent the true motives. There is no guarantee that a person knows himself adequately. On the contrary, modern psychology is based on the premise that especially essential emotional elements can remain hidden in the subconscious. But even when the decisive motives, the basic driving forces, have been uncovered—either by way of honest statements or through clever psychological testing methods—the question still remains as to just which extraneous conditions have turned these components into a desire for emigration. The desire to leave one's home and a normally secure existence cannot be seen as an elementary natural need independent of concrete social conditions. One must therefore assume quite complex motives which, under certain social conditions, bring about this specific desire.

Standard of Living

In my opinion, the most essential emigration motive is aimed at the higher standard of living in the FRG. The average citizen has a higher real income and the GDR citizen is basically convinced that he therefore somehow has a better life overall.

As we very well know through various information channels as well as through observation, products from the West as well as material living conditions in the developed capitalist industrialist countries hold an enormous fascination for the GDR citizen. Whatever is produced in the West tastes better, is more technically advanced, appears to function better in general, and is of better quality overall. There seems to be nothing, or hardly anything, that cannot be purchased over the counter or at least could not be obtained for the appropriate sum of money. Living conditions of the average citizen, especially the FRG citizen, appear almost glamorous from the GDR perspective. Aside from problems existing on the fringe, the entire FRG makes an orderly, decent, functioning—that is, a simply superior impression. Under the conditions of a life dependent upon technology and material consumption, these things must be given high priority by most people. All modern consumer goods come from the West, were produced there first, and often for years or decades could only be obtained from there, that is, if one has connections. But the desire to own or use these things is instilled in GDR citizens from the very start by way of the appropriate information channels! The GDR citizen measures his material consumer needs, which stem from the West, as it were, against the possibilities of satisfying those needs in the GDR, and he is forced to conclude that they fall short of those in the FRG. The fact that the work week in the FRG is shorter and vacations are longer are factors which, it seems to me, do not play a decisive role in the consciousness of the people at the present. If, however, the gap grows wider, and it must probably be assumed that it will, then this, too, can change quickly.

To many GDR citizens life in the FRG appears more attractive, more colorful, more diversified, more exciting, less sad and monotonous, and of course more free and relaxed. To get a more precise picture of this evaluation is often difficult because intuitive emotions play a part in this. The boredom of the GDR everyday routine also plays a role. In first place must be mentioned the tiresome gaps in the supply of consumer goods. The GDR citizen has the impression that nothing really functions and he permanently harbors the suspicion that what happens to function at the moment is not going to function much longer and that whatever happens to be available at the moment is not going to remain available for much longer, and so on. Standing in queues, pushing and shoving during rush times, the grinding running around until one finds what one is looking for, plus the many women in the workforce—these are some of the factors which can turn normal living into an effort. Wherever one regularly hears "we're out of it" when shopping, where masses of people crowd into narrow shopping aisles bumping into each other with shopping carts, and stressed-out salesladies come back with flip-pant replies, frustration and bad tempers rise. To flee from such conditions to a country which is also German and in which, so it seems, there is milk and honey for everyone if only he makes the effort and is clever enough to earn the appropriate sum of money, this means more

than just an acceptable way out for many. The daily confrontation with ever present shortages and nuisances, with ubiquitous sloppiness and creeping decay results in a longing for perfection and accurateness, for dynamics and confidence, sometimes only for a little more friendliness. Right or wrong, the GDR citizen believes he can find this elsewhere.

The particulars of our socialist everyday life have possibly worsened in recent years. At least they are scrutinized more closely and more impatiently by the populace. Add to this that at the latest since the early 1980's it has become clear that socialism is losing the competition with capitalism in the scientific-technical and economic spheres, according to all appearances has already lost it. Worsened foreign policy conditions are the warning sign. In addition, the economic situation in the GDR is probably even worse than it presently appears. In recent years we have clearly lived beyond our means. We have consumed too much and saved (i.e., invested in the economy) too little; we have borrowed, and repayments of the debt and interest payments are burdening us; we have let large parts of our infrastructure go to pot and allowed our old cities to decay. We must be aware that we have already "consumed" a part of our future.

The ideological influence of the West is also a problem. Mood and aspirations very much depend on the illusions people have about conditions in the West and what significance they attribute to certain occurrences for their personal lives.

For example, the significance, in terms of their own happiness, which many tend to attribute to the higher standard of living attainable in the FRG could be an illusion. A greatly improved living standard can also mean a relative sliding in the social hierarchy, a loss of prestige, and thus a relative change for the worse. On the other hand, facts speak for themselves. One must have experienced for himself just how frustrating it is to be in a socialist foreign country, barely able to afford to eat out, and at the same time witness how the other German with the "right" currency in his pocket can easily satisfy his every wish. Can one be blamed if he wants to change this condition, at least for himself?

Travel Possibilities

The possibility to travel is central in the demands of GDR citizens. The fact that the western borders were until just recently closed and could only be crossed by certain people on certain occasions with special permission was felt to be degrading and a form of imprisonment by nearly everyone. No one in the GDR was ever able to accept that it was impossible to visit relatives and friends living no more than one day's journey away or, as in Berlin, merely across the street; and that the government prevented one from getting to know the Western hemisphere (in accordance with one's economic possibilities). Without a solution to this problem there can be no kind of consensus between people and leadership.

In fact, the possibility of travel, freedom of movement, just permission, are most important. The possibilities of actual travel are always and everywhere limited by time and money. Here again, the question of living standard enters into the picture. But it is not the main point. It is this not being allowed to, which is seen as insufferable limitation of personal potential. Extensive vacation travel, visiting foreign cities and countries, is considered a normal desire in modern industrial countries which no government has the right to deny. Many feel betrayed by the government. It is possible to deal with economic limitations, but not with artificial barriers. The need to be free, to travel wherever one wants to if he can afford it financially, should not be underestimated.

This leads us to the next problem: travel abroad must be economically assured. If there are only formal travel possibilities because the state is not in a position to provide its citizens with the desired monetary exchange, this adds to the motivation to obtain the currency elsewhere. But how can one do this better than by working (and living) in the West?

The GDR citizen petitions for official freedom to travel and actual travel possibilities. Because he has been denied both until now and even in the future at least the latter cannot be granted as desired, he looks for his freedoms where he might find them, and will continue to look for them there.

The desire to have the possibility to travel, and the ideal of "seeing the world" are, without any question, part of the strongest emigration motives. The GDR citizen rebels against the desperate feeling of knowing that something is so close as to be within his reach, and yet forever unattainable.

Independence—Freedom—Democracy

The GDR is of course not a democracy after the parliamentary model; elections are held in a decidedly questionable manner, and there is of course no right of unrestricted ownership of private means of production, or the right to start businesses. But all this is not what causes or has caused the constant feeling of being held captive, and being kept in the minority.

The entire society was squeezed into an ideological corset. This does not mean primarily that an ideological pluralism patterned after the Western model was not tolerated. The SED's [Socialist Unity Party of Germany] power was absolute in such a way that even discussions about the most basic problems of our society, about how socialism should be advanced and could be more lucrative, were cut off, stifled or, at a minimum, viewed as suspect. Instead there was the unspoken demand—which was indeed satisfied out of a partially justified, but also in part out of a diffuse fear of detrimental consequences—to bring official thinking and action into line with pronouncements from above which had been made compulsory. It was expected from everyone appearing in public that they would adhere to the ideological course which, however, was limited not only by constitutional

facts but also as to predetermined social concepts, to the assessments of societal situations, to regulations about which problems are worthy of discussion or even of notice, and almost to the difference between good and bad. Thus, speaking on public and social problems was for the most part taboo. The price of this was the stifling of intellectual life on all levels and as a consequence a weakening of workers' initiative, above all of technological experts and of intellectuals.

I am prepared to make the benevolent assumption that the dominant and almost ubiquitous ideological SED leadership, in the view of its leading comrades and their theoreticians, represented itself as an attempt to help the people to realizations about the development of social processes and the corresponding objective need for actions which—it was thought—are based in science. As soon, however, as this attempt is connected to the outlawing of any dissonant opinion, it will in effect not convince the masses to accept the principles as true, but rather it means that each individual understands what the expectations "from above" are as far as his speaking and acting are concerned. This learning process aims at acceptance of ideological principles so that he can speak of them or use them in appropriate situations. It is the purpose of the "socialization process" to practice certain standards of conduct and speech in order to always be able to remain in the proscribed ideological line while at the same time not showing one's own opinions and convictions. This practice begins at the very latest in school, where the teacher's questions regarding political-ideological problems require certain answers and one must pretend to also believe them. On the other hand, it is well to conveniently avoid certain questions which touch on taboos. Such behavior has marked the life of citizens except for the private sphere. For better or worse, everyone was forced to learn this form of practical wisdom where one always knows or senses exactly when something may be said or done and when it may not, and to practice this independent of his own judgment. For that reason, an essential part of the process of socialization consisted in learning to find one's way in this ideological world of pretense while at the same time denying oneself. There is no need to be surprised that it is not possible to gain confidence in such a climate and to build a functioning socialism together reasonably.

Adapting to social conditions which are always ideological conditions as well is, of course, a prerequisite for the functioning of a society. Not always and not in every situation can everything be questioned. To adapt and adjust oneself is unavoidable to a certain extent or social tranquility is in constant jeopardy. To that extent I believe that a society which exists completely without deception or self-negation could only be a beautiful dream or ideal at best, but nothing that can ever be realized. I say this to avoid the accusation that I measure socialist realities, as we had them up until now, against utopian ideals. By no means! What most of us felt to be a degrading lack of freedom and patronization was this unprecedented mendacity of public communication

which had spread in socialism and which had poisoned the intellectual life of society as well as the spiritual life of each individual. It is not so much a matter of believing in ideological phantasms, false theories. That is unavoidable and it would not be difficult to show how bourgeois society also produces its ideological phantasms and protects them against unmasking. (Just think of the formula-like use of the words "freedom" and "democracy.") It is psychologically more important that the individual who thrashes the ideological phrase himself believes in it. The mendacity begins when public speech denies one's own convictions, and it is a forced mendacity, when false speech or action seem indicated, not in order to gain advantages, but merely to survive in a normal existence in society. The GDR citizen found himself in this situation always. It was oppressive and wearing that adaptation feats were demanded of him. It was not simply a matter of conducting oneself in the ideologically desired manner; it was demanded to negate one's true beliefs, not to let on how one really thinks. This form of extreme self-negation, which not only relates to external conduct, is required by the (humanistic) demand of the socialist ideology, to be in favor of abolition of false bourgeois consciousness and to guarantee the abolition of any kind of oppression. Just to give to understand that my ideology-conformist conduct is not in accordance with my true intentions and convictions would mean to destroy just that demand. The power structure in the ideologically monolithic socialism prohibits the adaptation feats representing themselves openly as a submission to this power. Appearances must be preserved! Therefore, mendacity and self-negation! We have begun to put an end to this. That does not mean that we are suddenly rid of all ideological phantasms; it will even be unavoidable that we will fall for new ones. But now we have the chance—and that, above all, must be learned in our society—to criticize our ideas and theories rationally in free discussions and thus gradually find something better.

Access to Information, Knowledge, Culture

It is quite similar when it comes to access to information as well as the products of intellectual, artistic, and cultural achievements. Here, the GDR citizen is cut off from a not unessential part of world culture and even more so from many international developments. Essential data about his own country as well as life in other socialist countries and their history were and are kept secret.

The lack of freedom related not only to information and knowledge but also the reception of works of art, etc., as well as creative work. Here, too, the individual was shackled so that many attempts in the fields of science and art were stifled from the start and the potential productivity of scientists, artists, and many others who create something new, on their own, who wanted to put themselves to the test and prove themselves, was wasted. For that reason it is not surprising that the intellectual life in the GDR was more like a funeral procession and did not meet the demands of a modern industrial society.

But I would like to warn against overemphasizing the relative importance of these factors when it comes to the desire for emigration. Here, it seems to me, lies a prejudice of intellectuals who tend to conclude that their own needs are also those of others. Even if the unlimited access to information of all kinds is an essential condition for a good life for those who are educated and interested, it means little to many others. Although probably everyone had at least some vague feeling of these many minor and major deprivations of freedom, manipulations, and patronizations, although everyone knew that in this or that situation he had to act in a certain way so as not to give offense ideologically, and although everyone had developed a feeling that he was being led on a leash which could be pulled tighter at any time, I still believe that this was not considered so important by most as to play a decisive role in his decisionmaking. I am rather convinced—and I say this although I know how unpopular it is—that many could have relatively easily dealt with this rigidity of social life if, yes if consuming had been more successful! I believe we have to acknowledge this fact soberly if we want to arrive at useful ideas as to how the emigration stream can be restricted.

Change of Life

The above-named motivations are all rooted in materialistic or ideological conditions. The following is rooted in the specifics of the typical life of a normal citizen, specifically the socialist citizen. I believe that with many who decide to emigrate, there is a subliminal motive to bring about another change in his life. People in their forties and fifties are especially predestined for this. Following a normal, average biography in the GDR, at the age of 30 or 35 at the latest all major obstacles to entering adult life have been overcome and one is essentially "stabilized." Education completed, he has been able to establish himself in his occupation for the first years, and often has found his life's position. He has a family, and after years of struggle has succeeded in getting an appropriate apartment which often times he will keep until the end of his life. He has most often also traveled to all vacation spots in the European CEMA countries he can afford to visit, as far as Bulgaria. Such an ordinary GDR citizen is (or was) in the following position: he has reached and explored everything, or at least very much of what is possible, and everything that is still possible is hardly made of the stuff for serious goal setting, at least not day after day, year after year. This will consist of repetitiveness and, at best, shallow climaxes. He sees his children grow up and feels himself growing old.

Added to that is the result of an almost total social security. As desirable as this is in itself, it makes it possible to plan most of one's life, but it also predetermines it. There is no need to really struggle for the security that has been achieved. Too limited are the possibilities of planning a more far-reaching or unorthodox life, perhaps even to try out different life styles, or at least to engage in extraordinary hobbies. The

ordinary citizen who has no plans for an extraordinary career and is not among the nouveau riche (who, even in the GDR have exorbitant travel possibilities), knows what is ahead of him until his life's end. What he misses and what he seeks are the many small attainable adventures which make life more diverse and more interesting, and possibly also the challenges which force him to prove himself a man and which, when met, hold the promise of happiness. I believe that the need for change in one's life, to begin something entirely new, is spreading not only in the GDR but also in the West. There, however, this desire vents itself in different ways, finds other avenues of fulfillment. But what would be more immediate for the GDR citizen than to pursue the actual or perhaps only the imaginary enticements of the West?

I have attempted to analyze the motives which cause people to leave the GDR. Presumably, only the most frequent and most essential could be considered. I did not speak of police encroachments, state police arbitrariness, spying, intimidation, and uncertainty of civil rights because no matter how strong a role they may have played in individual cases, in my opinion they do not come close to explaining the mass character of the emigration phenomenon. One must not forget that reasons and motives for continuous emigration have existed since nearly the beginning of the GDR's existence and have basically always remained the same.

The question of motives could also be turned around: what are decisive reasons for not seriously considering such a step, for staying here? One could perhaps say that there is no need for any special reason for people to want to stay and continue to live where they are already living. Only changes require decisions, generally only they are subject to substantiation and justification.

It seems to me, however, that such an approach does not do justice to the facts. To the degree to which there is a real possibility for leaving the GDR, the question of whether one makes use of this possibility is up for debate. The entire republic is concerned with the emigration subject. I dare not estimate what percentage of GDR citizens, i.e., families has seriously considered this question and made a decision. Surely many, many more than those who have emigrated or plan to do so. To that extent I think the reasons which are decisive for GDR citizens to either not even consider taking such a step or else after serious consideration not do so ought to be of interest.

Let me say at the outset: I consider the number of people who consciously decide for the GDR out of political-ideological reasons or even more so, out of social conviction, to be relatively small, so small that no election could be won with that percentage of the population. This does not mean that not many could name or know how to appreciate the advantages of socialism. Most know how to appreciate the humanistic ideals of the socialist idea. But for very few are the ties to socialism (sworn to again and again in the official propaganda up until now) to the state and its representatives, as well

as the "socialist consciousness" so highly developed as to sacrifice their personal happiness (or what they consider that to be). Reasons for staying are for the most part different, actually quite simple and understandable, and have nothing at all to do with not surrendering to the glitter of capitalism or having a proletarian class consciousness or something similar, or because one finds life in the GDR so extraordinarily beautiful. Probably the main reasons for staying are the risk of starting over, age, ties to home and those left behind, the task of what has been achieved. These reasons—and let me emphasize again that only average considerations are of interest here—are of an entirely apolitical nature, so that no vote for actual socialism can be concluded from the fact of staying in the GDR.

I consider the economic situation in the GDR, the low standard of living and the absence of any hope that this gap could grow smaller to be the ultimate decisive reason for leaving the GDR and living in the FRG.

Assertions to the contrary may apply to individual cases, but not on the average. In my view, a realistic assessment leads one to view with scepticism and suspicion the freedom/democracy motive often pushed into the foreground (by those concerned as well). After all, when questioned in front of Western cameras, one knows what is suitable and which aphorisms, in which context, they want to hear.

Because this admission is not easy—here the author is no exception—it is useful to remember that the economic upswing in Germany after 1933 was sufficient for the majority of Germans to find national socialism an acceptable political system. I am skeptical as to whether we have learned much since. To put it differently: I am convinced that the bourgeois free-democratic order of the West will be considered by the majority as absolutely worthy of defense only as long as it also assures a greater satisfaction of material consumer needs.

Whoever does not want to believe that material consumer needs are in first place dangerous in view of today's demands should honestly consider the following: let's assume the West would have to pay for its democratic political system (from which we can learn a few things) with a comparatively clearly lower standard of living, while an economic superiority of the East Bloc was bought at the expense of the until recently prevailing political conditions with its lamented undemocratic characteristics. Who believes that under those conditions the emigration problem in the GDR would be a problem worth talking about? I am convinced that, with the concept of the good life presently prevailing in East and West—it would not present (i.e., have presented) a serious problem for the overwhelming majority of GDR citizens to make peace with the old, undemocratic social structure, the ideological patronization, even the society's hypocritical mendacity born of fear, if only everything were all right with consumerism. The entire "psycho-social history" of the GDR is basically living proof of how people succeed in adapting to such conditions

and to live comfortably with them. Everyone can probably think of examples of how shockingly insensitive people can be when it comes to manipulation and degradation of their person, while they are quite alert when it comes to uncovering a supposed injustice in the distribution of a few marks of bonus!

In fact, the justified, sadly imperative, but too long unmet demand for democratic reorganization of the political system of socialism figures only marginally in the primary emigration motive, no more! The primary motive is economic in nature; it relates to the hoped for better consumer opportunities, the lucrative consumer goods, the more colorful diversity of social life and the real travel opportunities. To believe anything else would mean to indulge in a beautiful illusion. The motive of gaining the enjoyment of freer and more democratic conditions does play a role, but is not decisive for the decision of the GDR citizen to emigrate.

It is not my intention to look down on the "masses" like an elitist and to reproach them with ignoble motives. No, for that we are all—and here I really mean all—much too weak. I would only plead that at this particular time, when our society seems to have undergone an epoch of fundamental change, we work on a minimum of honesty with ourselves. If we want to ban constant lying from our society, then we must first be prepared to admit our true motivation to ourselves.

This fundamental change—thought impossible until recently—is still largely without any conception. We know more precisely which social conditions and institutions we think need reform and replacement than we know how reform should take place and what form of society would be desirable. Conceptual thinking is needed for a solution to the problems. The formulation of well meaning demands is important, to be sure (especially at the inception of the movement), but it is not sufficient. Demand lists must be judged with respect to the possibility and the consequences of their implementation; this also means that their inner coherency must be considered. If we want to consciously recreate our society and guard against unpleasant surprises, it is indispensable that we recognize the real motives, that we understand what the people, what we ourselves want and in which direction we are drawn.

The calamity of socialism shows that social conditions which ignore or fail to satisfy basic needs of the masses cannot be maintained permanently by humane means. Every practical social innovation is ultimately dependent on acceptance by a majority within a society. For this reason reform efforts cannot avoid analyzing objectively and without illusions the actual needs of people in order to arrive at ways for necessary changes.

My remarks about the paramount significance of material consumer needs address themselves primarily to those who would like to cling to the concept of socialism and wish that the reform process leads to a society which can still, even more than before, call itself "socialist." The prerequisite for

a truly improved acceptance of the socialist system is (next to its democratization) the increase in its economic strength. The trend that socialism is losing ground economically would have to be reversed. Even if this were to succeed—whereby I am convinced that nobody knows how this could succeed—it would probably take decades in order to reach a comparable material standard of living. Still, a change in trend could significantly change the mood in our country. Be this as it may! It must be expected that the processes of democratization, including greater freedom to travel, will not stop the wave of emigration for the present. I believe that we must count on great and difficult to handle losses for a long time. Such a development could further aggravate a

few of the unsolved problems which are at the bottom of the desire for emigration. It must further be considered that easier travel and greater freedom of movement in the choice of residence, including the possibility of return to the GDR, reduce the emigration risk for the individual and thus reduce the obstacle for taking such a step. In addition, greater freedom of movement offers better possibilities of long-range planning for emigration, to build the new nest before finally leaving the old one, as it were.

After the initial climax of emigration wave has waned, we will have to count on a continuing efflux on a reduced level. We should be prepared for this!

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